



JOHN ZERWAS, M.D.  
CHAIRMAN

OSCAR LONGORIA  
VICE-CHAIRMAN

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS**

**AGENDA  
SUBCOMMITTEE ON ARTICLES I, IV & V  
CHAIRMAN OSCAR LONGORIA**

WEDNESDAY, APRIL 18, 2018  
8:00 AM  
E1.026

**I. CALL TO ORDER**

**II. CHAIR'S OPENING REMARKS**

**III. INTERIM CHARGE #8:** *Review state funding, including formula funds, for adult probation departments and the juvenile justice system. Consider recommendations to enhance equity, encourage the use of cost effective practices, and meet the future needs of departments and counties throughout the state.*

**LEGISLATIVE BUDGET BOARD**

- John Posey, Analyst
- Kelsey Vela, Analyst

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

- Bryan Collier, Executive Director

**TEXAS JUVENILE JUSTICE DEPARTMENT**

- Camille Cain, Executive Director
- Mike Meyer, Chief Financial Officer

**IV. INTERIM CHARGE #9:** *Study the state crime lab operational structure and recommend strategies to increase efficiency, including the possibility of establishing a fee for certain services to minimize duplication and encourage timely processing.*

**LEGISLATIVE BUDGET BOARD**

- Shauna Miller, Analyst

**DEPARTMENT OF PUBLIC SAFETY**

- Skylor Hearn, Deputy Director
- Brady Mills, Assistant Division Director, Law Enforcement Support

**V. INTERIM CHARGE #18, K:** *Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature. In conducting this oversight, the Committee will also specifically monitor: The Department of Public Safety's efforts to eliminate the sexual assault kit backlog with funds appropriated for that purpose.*

**DEPARTMENT OF PUBLIC SAFETY**

- Skylor Hearn, Deputy Director
- Brady Mills, Assistant Division Director, Law Enforcement Support

**VI. PUBLIC TESTIMONY**

**VII. ADJOURN**



## LEGISLATIVE BUDGET BOARD

# Juvenile Justice System and Adult Community Supervision Funding

**PRESENTED TO HOUSE APPROPRIATIONS SUBCOMMITTEE ON I, IV, AND V  
LEGISLATIVE BUDGET BOARD STAFF**

**APRIL 2018**

# Statement of Interim Charge

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Review state funding, including formula funds, for adult probation departments and the juvenile justice system. Consider recommendations to enhance equity, encourage the use of cost-effective practices, and meet the future needs of departments and counties throughout the state.

# Funding for TJJD and TDCJ

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- Funding for the Texas Juvenile Justice Department (TJJD) and Texas Department of Criminal Justice (TDCJ) includes state, local, and federal funds.
- Some strategies are formula funded, while other strategies are not formula funded.
- Funding for juvenile and adult probation departments can consist of both local and state funds.
- Funding for juvenile and adult correctional facilities and programs is mostly derived from state funds, though it can include some federal funds.
- LBB population projections are a component of formula funding.

# Correctional Population Projections: Overview

	June 2016 Projections	January 2017 Projections
<b>Purpose:</b>	<ul style="list-style-type: none"><li>• Informed Agencies' Legislative Appropriation Requests</li><li>• Informed the 2018-19 General Appropriation Bills as Introduced</li></ul>	Informed the committee substitutes to the 2018-19 General Appropriation Bills as Introduced
<b>Based on individual level data through:</b>	Fiscal Year 2015	Fiscal Year 2016

- Projections (June and January) are based on current laws, policies, and practices. Subsequent shifts in these factors are considered and may be incorporated into future LBB projections.
- The LBB simulation model incorporates these factors into the population projections and tracks an individual movement into, through, and out of the criminal and juvenile justice system.

# Correctional Population Projections: Methodology

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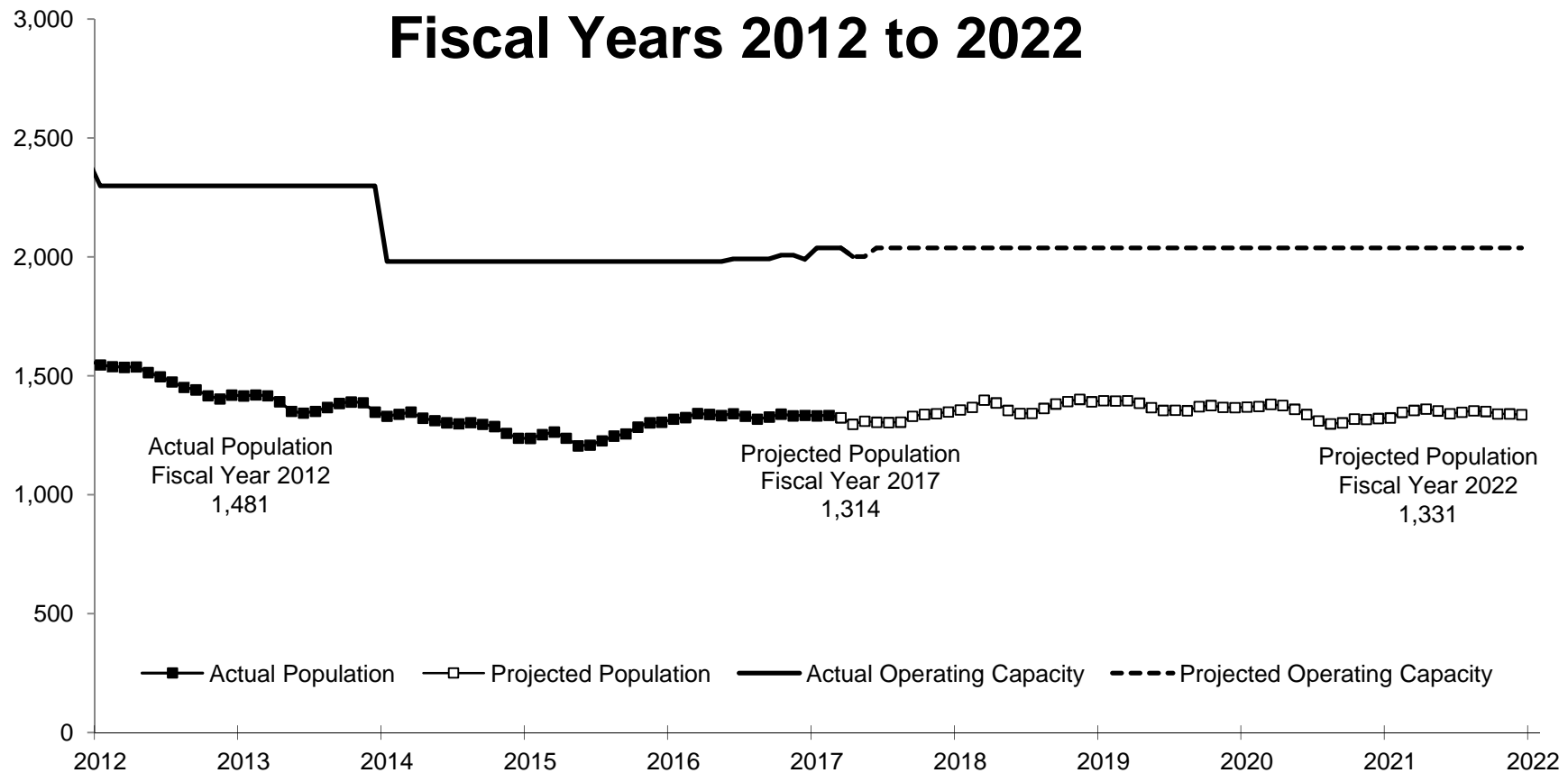
## Central Questions

- How many individuals will enter the system?
- How long will they stay in the system?

## Projections Generated Using:

- Expected number of admissions over the projection period
- Predicted length of stay of those admitted
- Predicted length of stay of those in the system at the end of the previous fiscal year

# TJJD Actual and Projected State Residential Average Daily Population and Operating Capacity

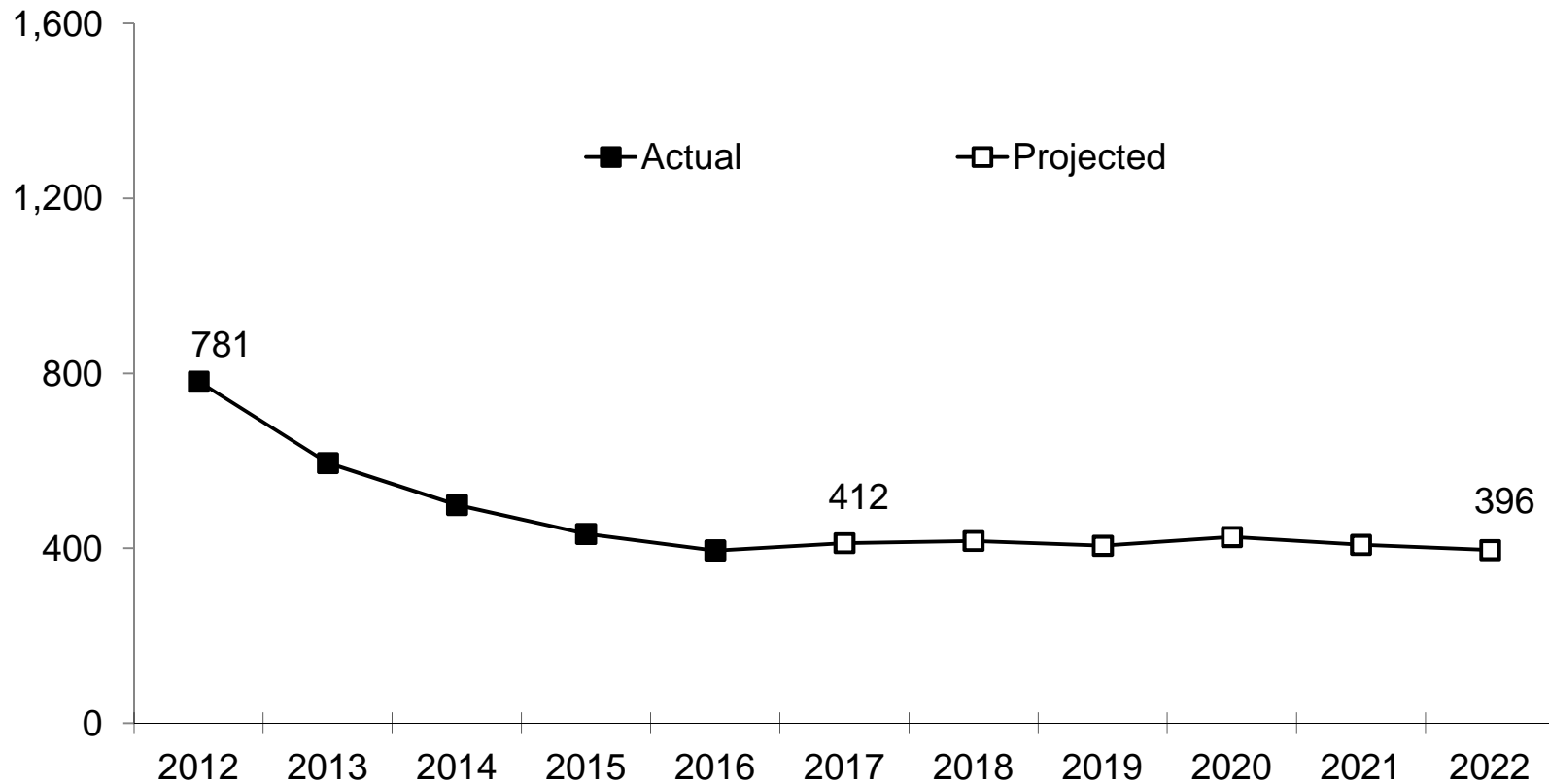


NOTES: Operating capacity represents the total number of beds available for permanent assignment. Not included within this number are 332 temporary assignment (youth management and clinic) beds. Capacity includes 479 permanent assignment beds and 74 temporary assignment beds offline. The operating capacity is projected to increase slightly from fiscal years 2017 to 2018, when the agency returns 36 beds to capacity which are temporarily offline due to construction. The operating capacity for fiscal year 2017 is the operating capacity as of January 2017.

SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.

# Juvenile Parole Projections

Fiscal Years 2012 to 2022

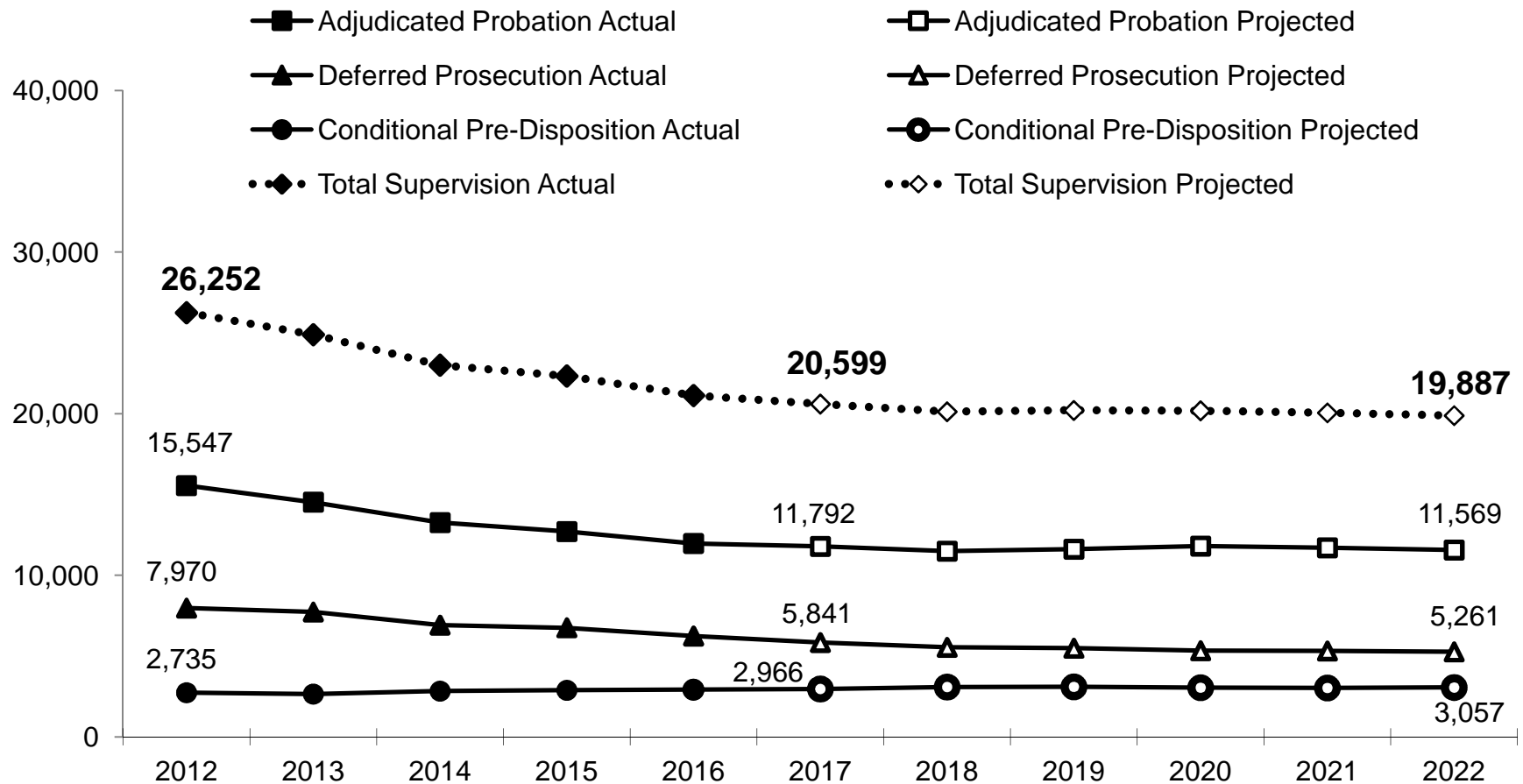


SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.



# Juvenile Probation Supervision Populations

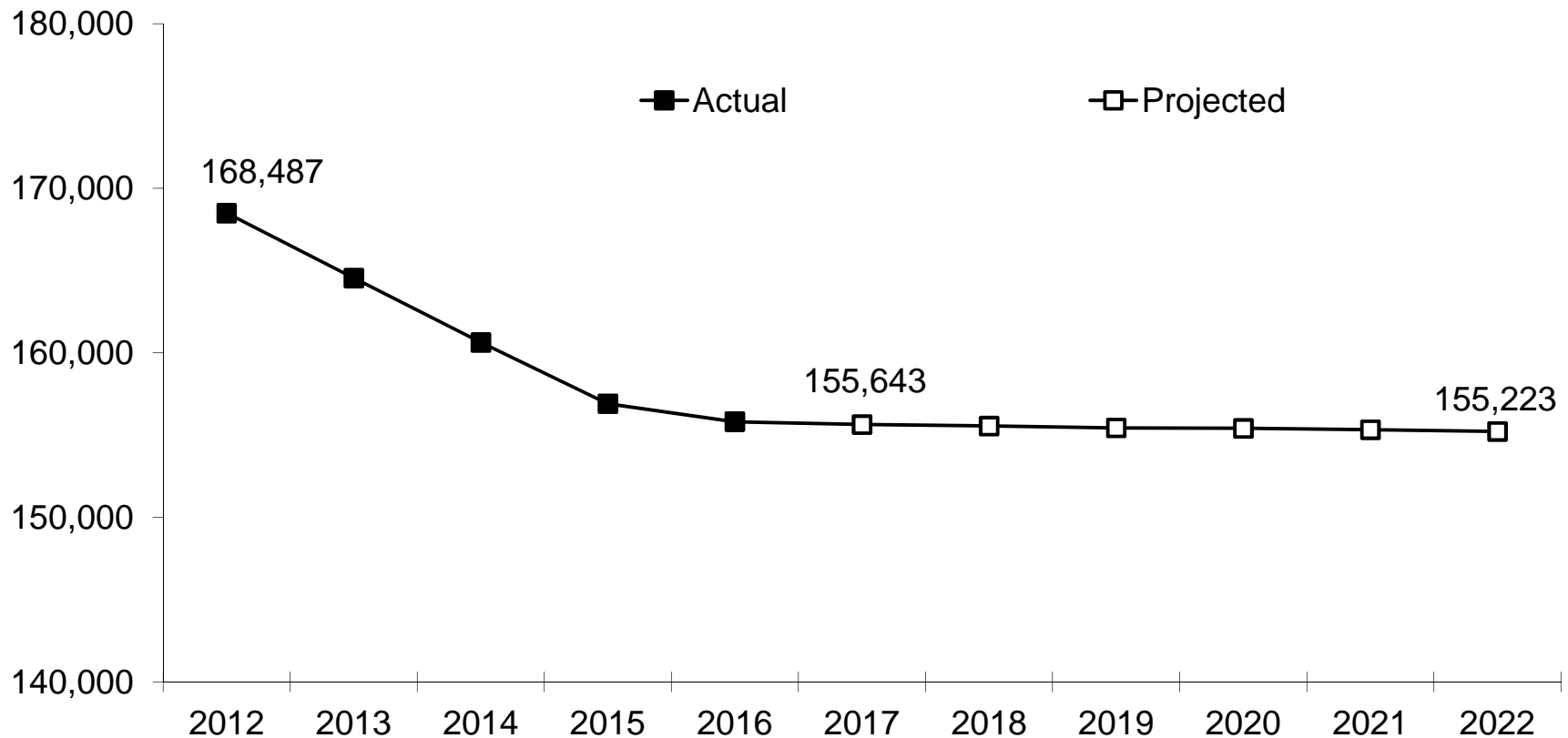
Fiscal Years 2012 to 2022



SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.

# Adult Felony Direct Community Supervision

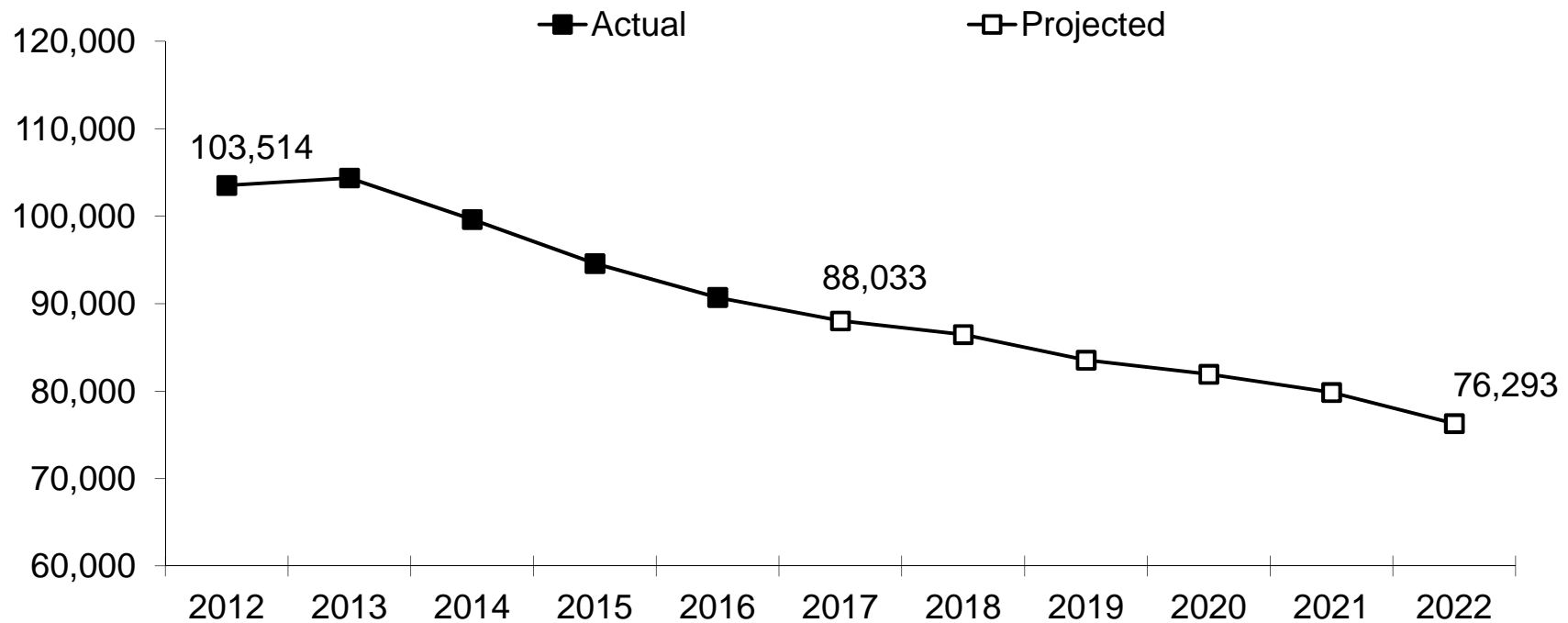
## Fiscal Years 2012 to 2022



SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

# Adult Misdemeanor Community Supervision Placements

Fiscal Years 2012 to 2022



SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

# TJJD Funding

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## Formula Funding

- Refers to agency strategies formula-funded by Legislature (does not address TJJD policies or formulas for dispersing grants to local probation departments)
- Applies to strategies primarily affected by population fluctuations
  - Goal A - Basic Probation Supervision – includes funding for face-to-face contacts with probation officers
  - Goal B - Institutional Supervision and Food Service, Halfway House Operations, and Contract Residential Placements – includes supervision and food for youth housed in the three types of facilities used for youth committed to TJJD
  - Goal C – Parole Direct Supervision - includes funding for face-to-face contacts with parole officers
- Primary Methodology – LBB projected population for each FY multiplied by actual state cost per day (CPD) from the first year of previous biennium and number of days in each FY
- Other Methodologies – May be used if funds transferred in or out of a program or strategy significantly change actual CPD of first year of previous biennium
  - May use agency requested CPD
  - May use previous biennium appropriated CPD

# TJJD Funding (cont.)

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## Non-Formula Funding

- Includes strategies, programs and services primarily focused on providing treatment, counseling, and other programs and services based on individual youth needs
  - Goal A – Community Programs, Commitment Diversion Initiatives, Mental Health Services Grants, Regional Diversion Alternatives Program
  - Goal B - Education, Health Care, Integrated Rehabilitation Treatment
  - Goal C – Parole Programs and Services
  - Goal D – Office of Independent Ombudsman
  - Goal E – Training and Monitoring
  - Goal F - Administration
- Methodology may include:
  - Base program or initiative level funding
  - Agency exceptional item funding
  - Funding for new initiative added by the Legislature
    - For example, Regional Diversion Alternatives Program – Initiated in 2016-17 at \$9.1 million; biennialized to \$18.3 million in 2018-19

# Juvenile Justice Department

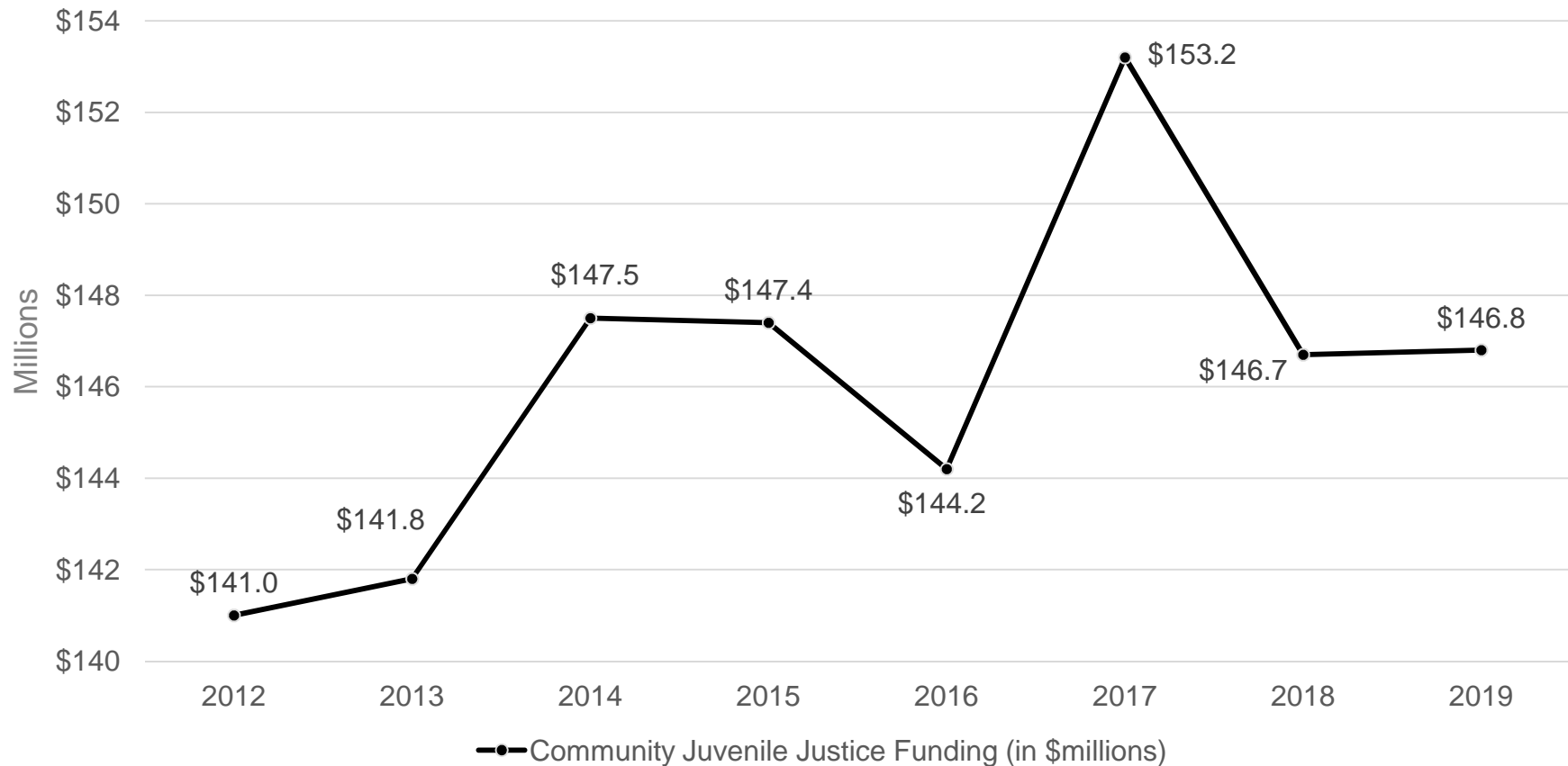
## Juvenile Probation

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### Goal A – Community Juvenile Justice

- Includes nine strategies, eight consist solely of pass-through grant funding for local probation departments
- Programs include:
  - Basic Supervision
  - Commitment Diversion Programs
  - Mental Health Services
  - Regional Diversion Alternatives Program
  - Community Programs
  - Pre and Post-Adjudication Facilities
  - Juvenile Justice Alternative Education Programs (JJAEPs)
- Basic probation supervision grants provide only supervision to juveniles in the system
- Programs and services are funded in other strategies listed above

# Juvenile Probation General Revenue-Related Funding



NOTES: FY 2012-2017 expended amounts; FY 2018-19 Appropriated amounts. excludes probation refunds (\$2.3 million per biennium).  
FY 2017 expended includes the first full year of funding for the Regional Diversion Alternatives Program. FY 2018-19 appropriated also includes full funding for this initiative, but is offset by reductions for population projection and cost per day decreases, and agency requested funding levels for mental health services and pre-and post adjudication facilities grants.

SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.

# TJJD State Services and Facilities

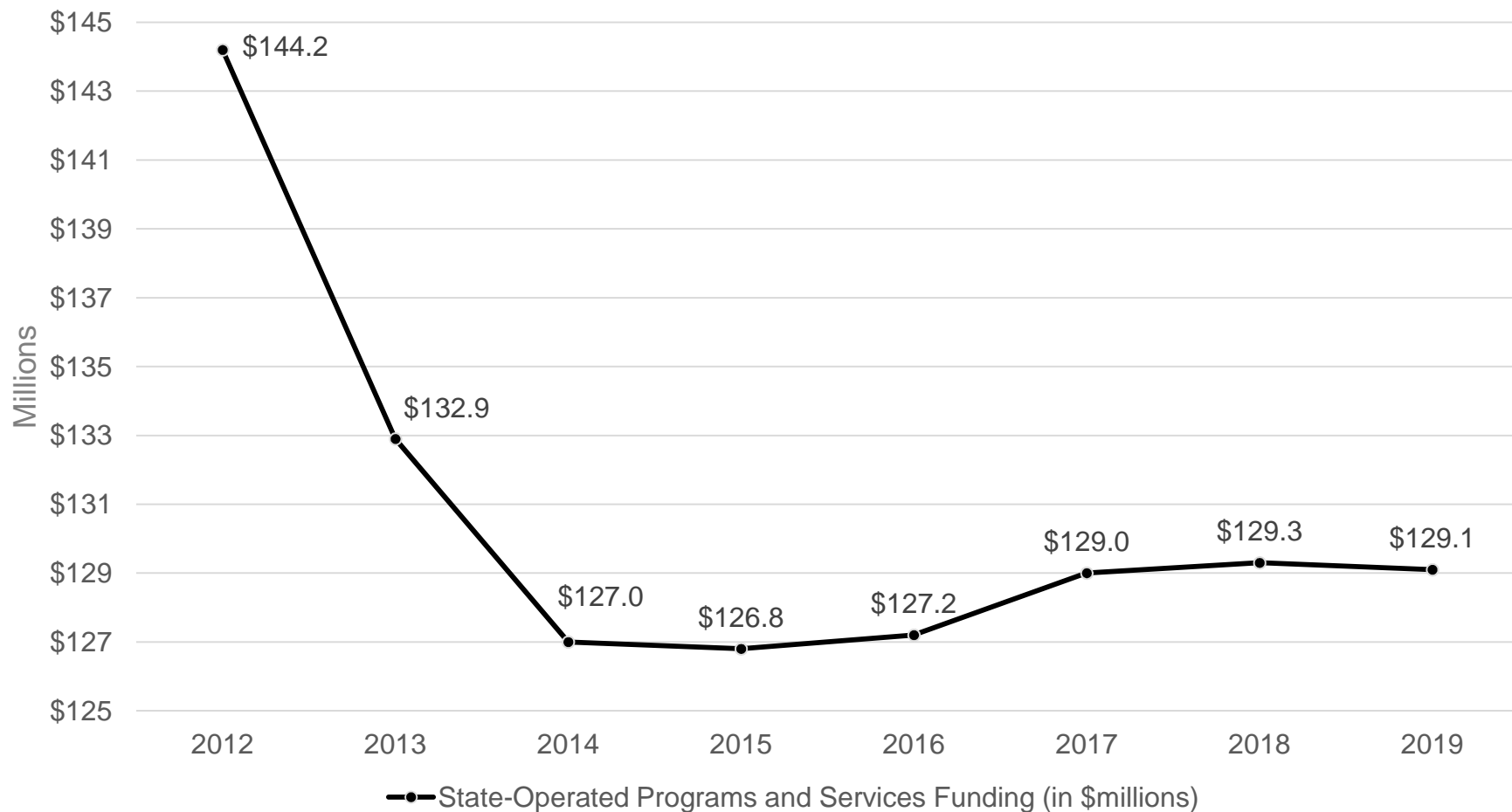
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## Goal B – State Services and Facilities

- Includes 13 strategies, 10 provide direct supervision and services to youth committed to state facilities
- Programs include:
  - Assessment, Orientation, and Placement Services
  - Institutional Supervision, Food Service, Operations, and Overhead
  - Halfway House Operations
  - Contract Residential Placements
  - Educational Services
  - Health and Mental Health, and Psychiatric Care
  - Integrated Rehabilitation Treatment, including Specialized Treatment



# TJJD State Programs and Services General Revenue-Related Funding



NOTES: FY 2012-2017 expended amounts; FY 2018-19 appropriated amounts.

SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.

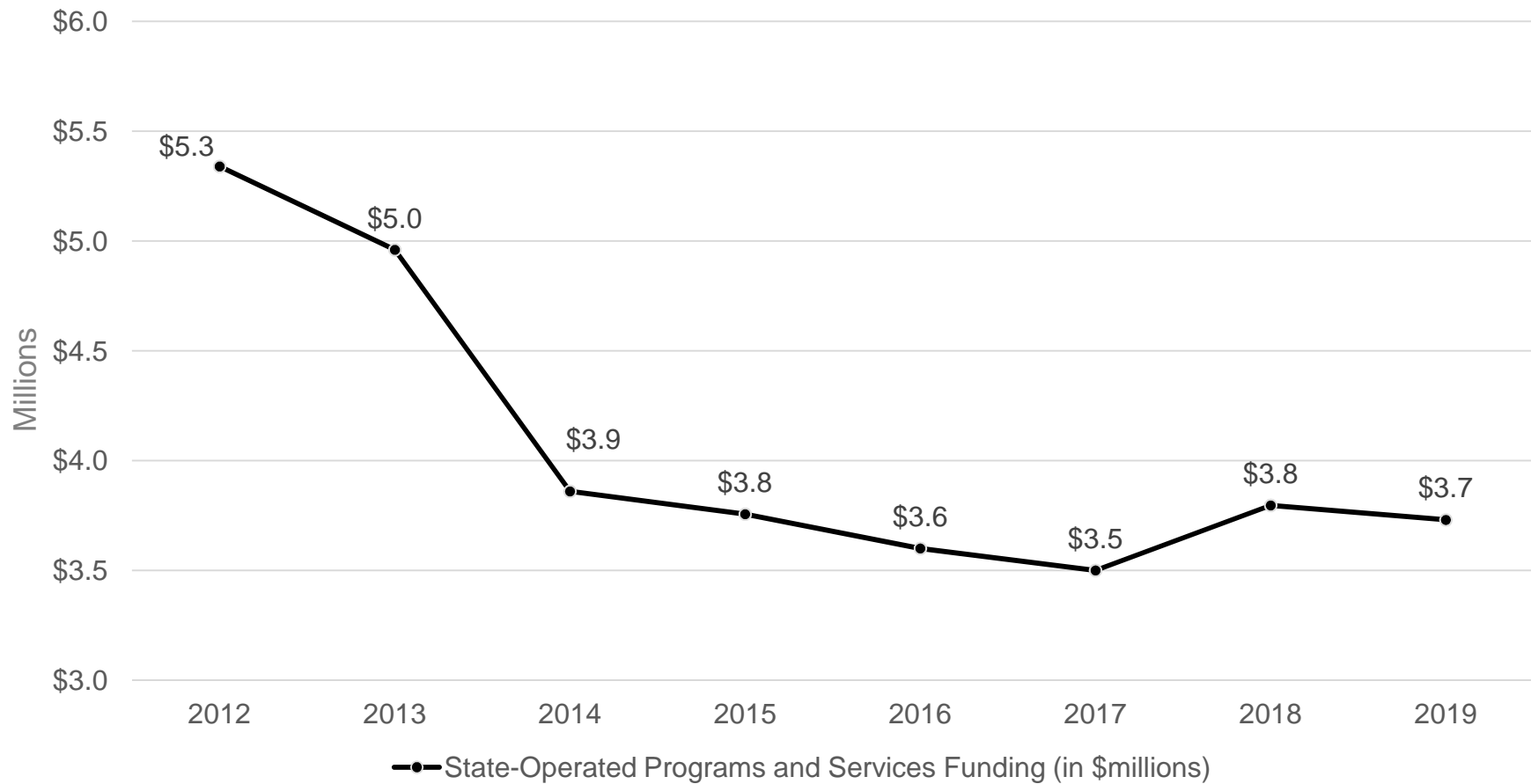
# TJJD Parole

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## Goal C – Parole Services

- Includes two strategies:
  - Parole Direct Supervision
  - Parole Programs and Services
- Parole direct supervision provides basic supervision for youth released from TJJD on parole supervision
- Parole Programs and Services provide additional services like aftercare, substance abuse counseling, and specialized treatment

# TJJD Parole General Revenue-Related Funding



NOTES: FY 2012-2017 expended amounts; FY 2018-19 appropriated amounts.

SOURCES: Legislative Budget Board; Texas Juvenile Justice Department.

# Department of Criminal Justice

## Adult Community Supervision

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### Goal A – Community Supervision and Discretionary Programs

- Goal is to divert offenders from incarceration through the use of community supervision (probation)
- 123 community supervision and corrections departments (CSCDs) serving Texas' 245 counties
- Community Justice Assistance Division (CJAD) administers state funding to local CSCDs
- CSCDs submit a strategic plan outlining current programs and services
- Goal funding includes both formula-funded (Basic Supervision) and non-formula funded strategies (Diversion Programs, Community Corrections, and Treatment Alternatives to Incarceration)

# TDCJ Basic Supervision

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## Formula Funding

Refers to agency strategies formula-funded by Legislature (does not address TDCJ policies or formulas for dispersing grants to local probation departments)

Funded by projected number of direct felony and misdemeanor placements at actual cost per day

- Cost per Day - calculated by using actual GR cost per day of the first year of the previous biennium multiplied by the LBB projection and the number of days in each year of the next biennium

## Basic Supervision – Felony Direct Community Supervision

- 2018-19 funded at \$1.057 per felony offender per day

## Basic Supervision – Misdemeanor Community Supervision

- 2018-19 funded at \$0.70 per placement per day for 182 days per statute
- Appropriations total \$136.4 million in General Revenue-Related Funds in 2018-19 biennium

# TDCJ Community and Diversion Programs

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## Non-Formula Funding

Community Corrections Program – Provides a variety of services to probationers

- Distribution: CJAD distributes funds based on the ratio of felons placed directly on community supervision to population of counties in the CSCD's jurisdiction
- 2018-19 Appropriations: \$83.5 million in GR

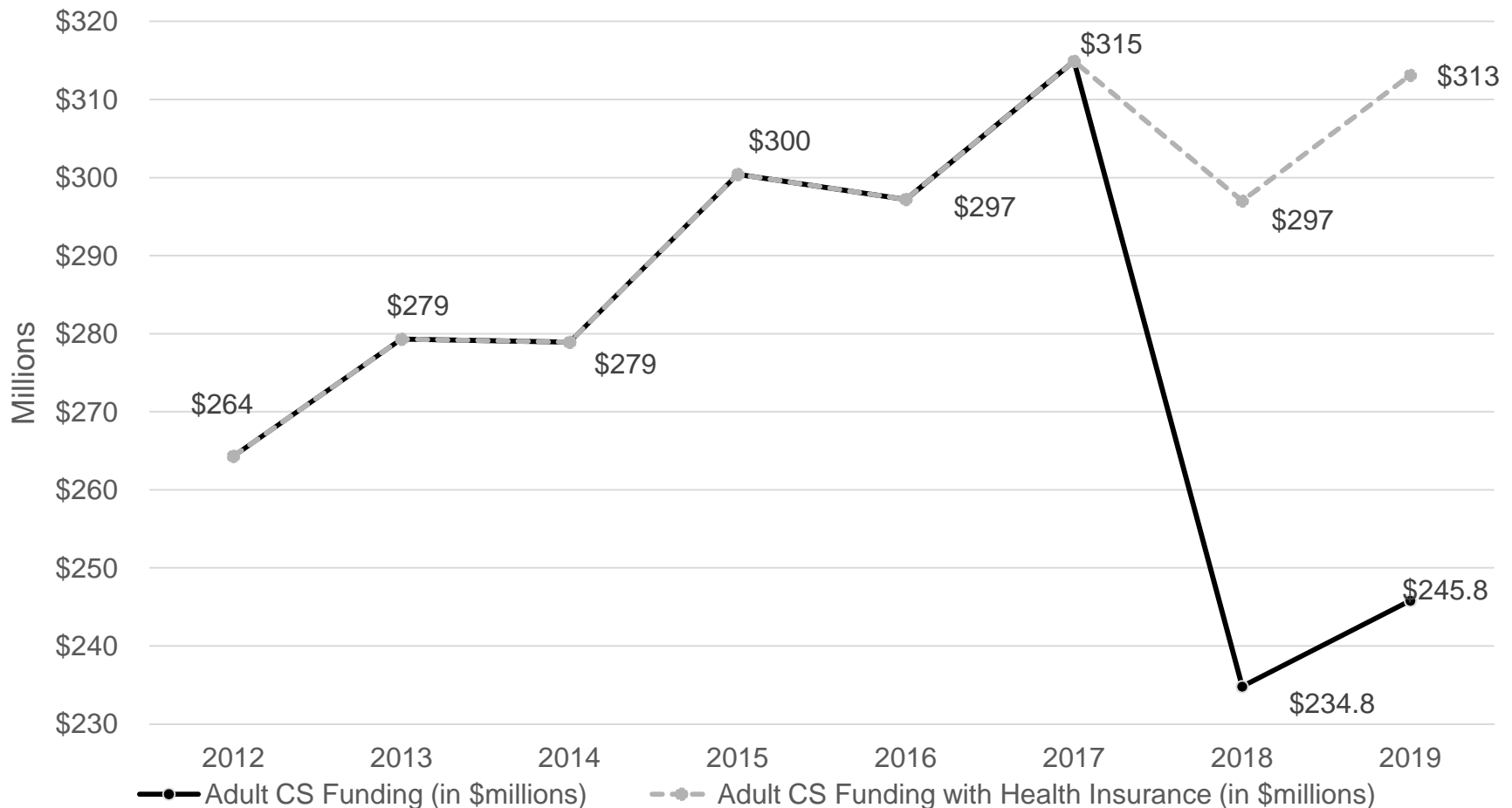
Diversion Programs - Include residential treatment beds, specialized mental health caseloads, substance abuse programs, and battering intervention and prevention programs

- Distribution: Discretionary grants awarded to CSCD's for programs that divert offenders from incarceration. Requested through grant application process which considers offenders' needs, current CSCD funding, and program performance.
- 2018-19 Appropriations: \$241.0 million in GR, including \$6.3 million for new pretrial diversion initiative

Treatment Alternatives to Incarceration Program - Provides substance abuse screening, assessment, referral and treatment to offenders who do not qualify for or are unable to afford treatment

- Distribution: Grants awarded to CSCDs based on application process
- 2018-19 Appropriations: \$19.8 million in GR

# TDCJ Community Supervision General Revenue Related Funding



NOTES: FY 2012-2017 expended amounts; FY 2018-19 Appropriated amounts. excludes cscd refunds (\$13.0 million in first FY of each biennium). Dotted line indicates total community supervision funding across agencies. The Eighty-Fifth Legislature transferred state contributions for CSCD health insurance to the Employees Retirement System. SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

## **Juvenile Justice Department Formula Funding**

### ***Juvenile Justice Department formula-funded strategies***

- A.1.2. Basic Probation Supervision
- B.1.3. Institutional Supervision and Food Service
- B.1.5. Halfway House Operations
- B.1.9. Contract Residential Placements
- C.1.1. Parole Direct Supervision

### ***How LBB Staff calculate formula funding***

When developing funding recommendations for formula-funded strategies, three individual components of an equation are used:

- (1) Days in the fiscal year,
- (2) Juvenile population projected, and
- (3) Cost per day (CPD).

These three components are multiplied to determine an appropriations amount for the fiscal year.

### ***How Components of the Formula are Calculated***

Component (1) is 365 days in a normal year, and 366 days in a leap year.

Component (2) is the projection for each affected juvenile population as generated by the LBB's Criminal Justice Data Analysis Team.

Component (3) is calculated using total General Revenue Fund expenditures, divided by the average daily population, divided by the number of days in the fiscal year (FY 2016 expenditures and data were used in the 2018-19 calculation).

### ***Other Considerations***

The above approach is not a one-size-fits-all solution for the agency, or even each of the strategies listed, and may be altered based on a variety of factors (for example, agency requests or various analyses) and are ultimately the product of legislative deliberations.

\*Cost per day for this purpose is only General Revenue funding allocated to a strategy for the purpose of supervising offenders served in programs within that strategy. CPD as described here is NOT to be confused with the CPD provided in the LBB's biennial Uniform Cost Report, which reflects All Funds expenditures, including benefits and other costs not used in formula funding, to determine the total cost of a program.



## **Department of Criminal Justice Formula Funding**

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### ***Department of Criminal Justice formula-funded strategies***

A.1.1. Basic Supervision

F.2.1. Parole Supervision

### ***How LBB Staff calculate formula funding***

When developing funding recommendations for formula-funded strategies, three individual components of an equation are used:

- (1) Days in a specified time period,
- (2) Adult population projected, and
- (3) Cost per day (CPD).

These three components are multiplied to determine an appropriations amount for the fiscal year. Adult felony and adult misdemeanor funding recommendations are calculated separately as the result of different statutory requirements. Then funding recommendations for adult felony and adult misdemeanor are summed to determine total formula funding for the strategy.

### ***How components of the formula are calculated***

#### **Component (1)**

- Felony direct community supervision: 365 days in a normal year, and 366 days in a leap year;
- Misdemeanor community supervision placements: 182 days as required by Government Code Section 509.011; and
- Parole Supervision: 365 days in a normal year, and 366 days in a leap year.

#### **Component (2) as produced by the LBB's Criminal Justice Data Analysis Team**

- Projected adult felony direct community supervision populations (end-of-month yearly average);
- Projected adult misdemeanor community supervision yearly placements; and
- Projected adult parole supervision (end-of-month yearly average).

#### **Component (3)**

- Felony direct community supervision cost per day (CPD) is calculated using total General Revenue Fund expenditures (less misdemeanor funding), divided by the end-of-month yearly average number of offenders under felony direct community supervision, divided by the number of days in the fiscal year (FY 2016 expenditures and data were used in the 2018-19 calculation).
- Misdemeanor community supervision placements, CPD is \$0.70 cents as required by TDCJ rider 48 (2018-19 biennium).
- Parole supervision CPD is calculated using total General Revenue Fund expenditures, divided by the end-of-month yearly average number of offenders under parole supervision, divided by the number of days in the fiscal year (FY 2016 expenditures and data were used in the 2018-19 calculation).

\*Funding for Community Supervision and Corrections Department health insurance was previously removed from total General Revenue Fund expenditures in the Basic supervision strategy prior to the CPD calculation. The Eighty-fifth Legislature transferred funding for CSCD health insurance to the Employees Retirement System, which will simplify the calculation going forward.

\*Cost per day for this purpose is only General Revenue funding allocated to a strategy for the purpose of supervising offenders served in programs within that strategy. CPD as described here is NOT to be confused with the CPD provided in the LBB's biennial Uniform Cost Report, which reflects All Funds expenditures, including benefits and other costs not used in formula funding, to determine the total cost of a program.

LEGISLATIVE BUDGET BOARD ID: 5209

APRIL 18, 2018



## LEGISLATIVE BUDGET BOARD

### **Contact the LBB**

Legislative Budget Board

[www.lbb.state.tx.us](http://www.lbb.state.tx.us)

512.463.1200

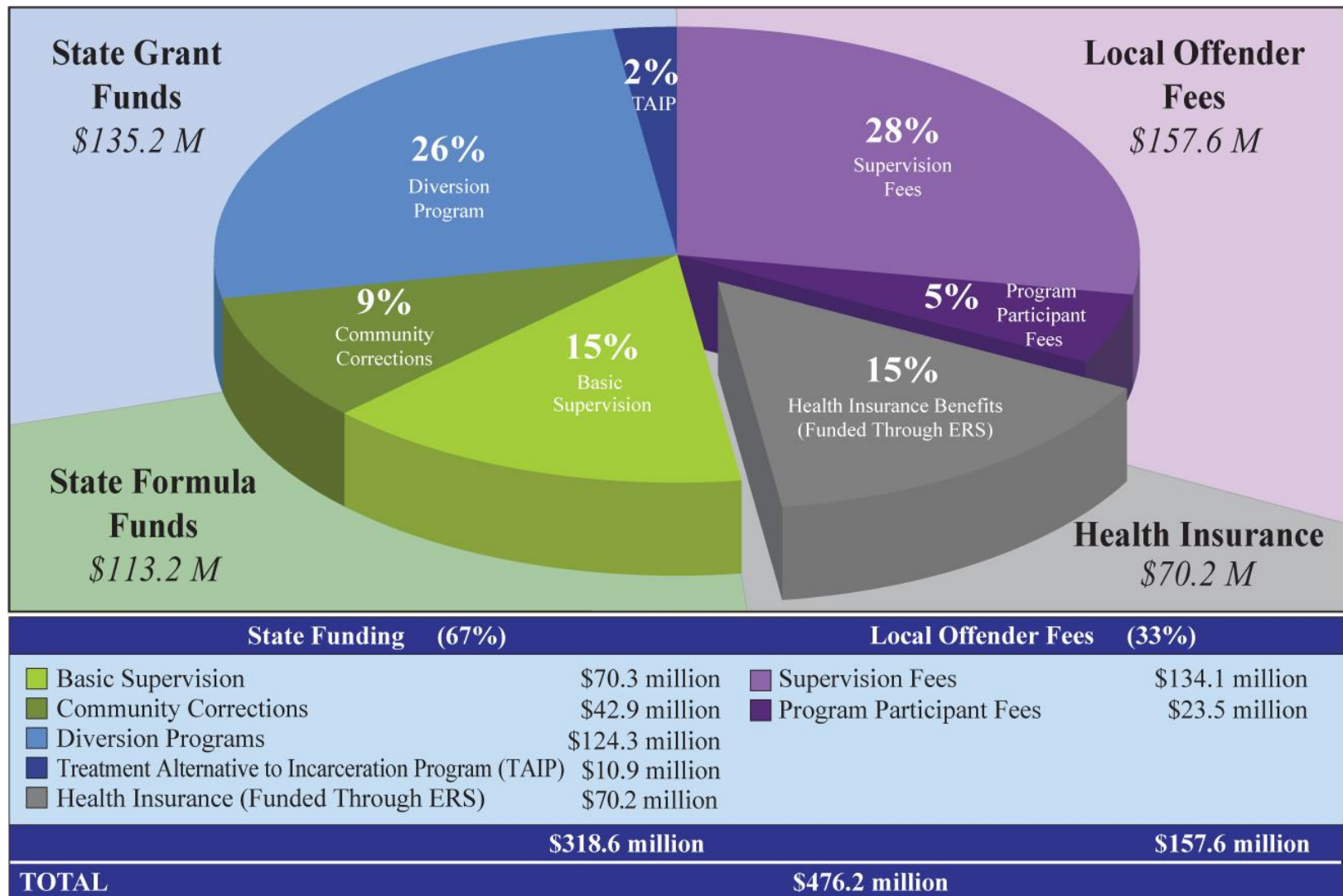
# House Committee on Appropriations Subcommittee on Articles I, IV & V April 18, 2018 Hearing

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TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Funding for Community Supervision and Corrections  
Departments (Adult Probation)

# Sources of Funding for Probation Departments



# Adult Probation Funding

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***Departments must comply with TDCJ-CJAD Standards for Community Supervision and Corrections Departments (CSCDs)***

## ***State Formula Funds*** [Section 509.011, Government Code]

- Basic Supervision Funds
  - Provide core community supervision services that meet required levels of supervision
  - Distributed based on the previous calendar year's number of misdemeanor placements and direct felony offenders on community supervision, in comparison to statewide totals
- Community Corrections Funds
  - Provide state funding to community-based correctional programs
  - Distributed based on the previous calendar year's direct felony offender count and the county's civil population, in comparison to statewide totals

# Adult Probation Funding

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## ***State Grant Funds***

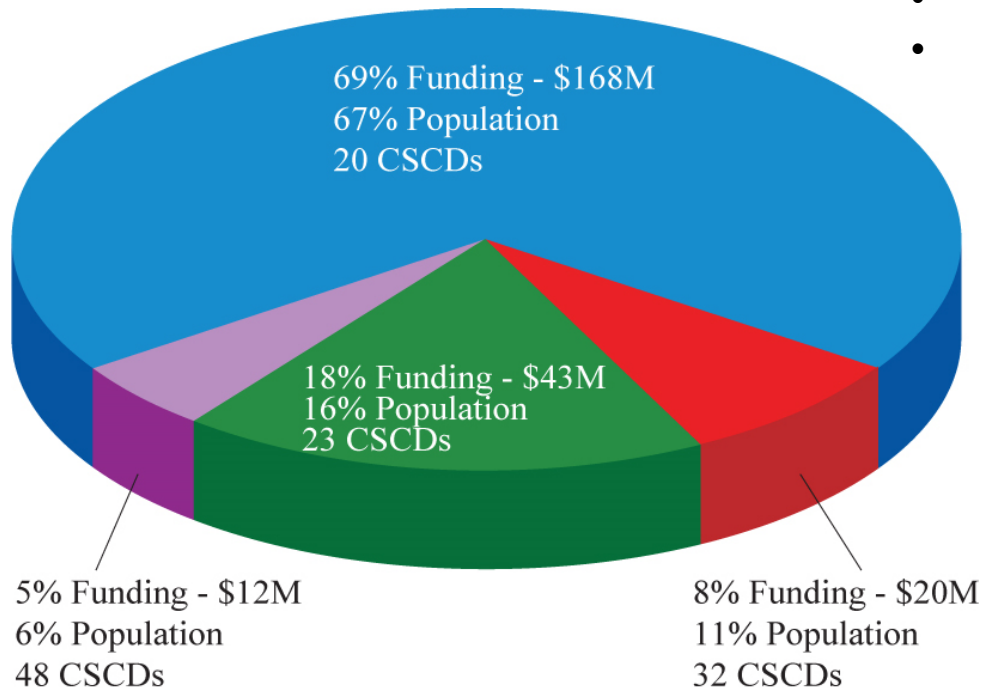
- Diversion Program Funds
  - Target the diversion of offenders from incarceration
- Treatment Alternative to Incarceration Program Funds
  - Primary statewide community-based substance abuse treatment program for probationers
- To receive grant funding, probation departments must submit signed special grant conditions that:
  - Target specific populations
  - Help ensure programs have the essential components that reduce recidivism
  - Apply a standardized and validated assessment instrument to drive potential referrals

## ***Local Offender Fees***

- Supervision fees—by statute are not less than \$25 and not more than \$60 per month
- Program participant fees—amount depends on the department and type of program

# Adult Probation Funding

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## 123 Probation Departments

- 252,714 Direct & Pretrial Diversion Probationers
- 3,069 Community Supervision Officers

## Departmental Programs

- 27 Community Corrections Facilities
- 178 Substance Abuse Treatment Programs
- 286 Specialized Programs
- 53 Sex Offender Treatment Programs
- 782 Specialized Officers

# Adult Probation Funding

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- In FY 2014, TDCJ developed a Funding Review Committee made up primarily of local CSCD Directors.
- TDCJ was directed to review the statutory probation funding formulas by the 83<sup>rd</sup> Legislature, SB 213 (TDCJ Sunset Legislation) followed by expanded direction from the House Committee on Corrections during the 84<sup>th</sup> Legislature.
- In August 2016, TDCJ submitted a final report to state leaders with funding recommendations developed by the committee, such as:
  - Front load all felony offenses except those ineligible for early termination
  - Increase supervision and treatment funding for resource intensive specialized populations





# Community Supervision and Corrections Department Funding Review and Recommendations



Texas Department of Criminal Justice  
Community Justice Assistance Division

August 2016

### Executive Summary

The 83<sup>rd</sup> Texas Legislature passed Senate Bill (SB) 213 which required the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) to review the current funding formulas specified under Section 509.011, Government Code, and to study the feasibility of adopting performance based funding formulas for community supervision and corrections departments (CSCDs). Subsequently in the 84<sup>th</sup> Texas Legislative session, the House Committee on Corrections directed TDCJ to form a committee to provide recommendations pertaining to improved community supervision funding strategies to promote the best outcomes with regard to grantee performance, lowered recidivism rates and efficient use of state resources. Because SB 213 already required committee formation and stakeholder input, the House Committee on Corrections recommended additional membership and expanded the focus of the original funding review committee.

The funding review committee established the following objectives:

- Study the use of performance based funding formulas, including using an offender's risk level or other appropriate factors
- Provide that funding allocations are equitable
- Incentivize best practices
- Reduce the number of revocations
- Meet the needs of historically underserved communities
- Promote successful probationer outcomes
- Reduce over-reliance on probation fees

Primary recommendations related to SB 213 include:

- Modify the current probation funding formula
  - Front load all felony offenses except those ineligible for early termination (ET)
  - Fully fund the first three years of supervision and reduce the next two years of supervision proportionately
- Retain current probation funding structure, if additional funding is not available to keep CSCDs "whole"

Additional recommendations related to directives outlined by the House Committee on Corrections include:

- Increase aftercare supervision and treatment funding following residential treatment in community corrections facilities
- Increase funding for resource intensive specialized populations
- Fund misdemeanors at the same level as felonies
- Fund felony and misdemeanor diversion at the same rate as traditional probation

### Introduction

In July 2013, the Texas Sunset Advisory Commission issued its final report for the Texas Department of Criminal Justice (TDCJ). The recommendation for Issue 3 stated: Community Supervision Funding Formulas and Grant Processes Need Strengthening to Keep Pace With a Changing Adult Probation System. As part of this issue, the Sunset Commission found that the state's current community supervision funding formula does not align with the Legislature's recent, outcome-based community supervision initiatives, but a lack of data precluded modifying the formulas at that particular time. The 83<sup>rd</sup> Texas Legislature passed SB 213, which related to the continuation and functions of TDCJ. As codified in Government Code Sec. 509.014, TDCJ-CJAD was required to review the community supervision funding formulas and study the feasibility of adopting performance-based funding formulas, including whether the formulas should take into consideration an offender's risk level or other appropriate factors in allocating funding. The statute also requires TDCJ-CJAD to consult with the Legislative Budget Board (LBB) to determine the impact of any recommendations to the allocation of the division's funds. Additionally, the division was directed to seek input from CSCDs, the Judicial Advisory Council, and other relevant interest groups, and to report its findings and recommendations to the Legislature.

Subsequently in the 84<sup>th</sup> Texas Legislative session, the House Committee on Corrections heard testimony on House Bill (HB) 2869, by Representative Alma Allen, relating to the creation of an advisory committee to study issues related to community supervision and corrections departments. Therefore, the House Committee on Corrections requested the TDCJ to expand the membership of the existing committee to include a wider diversity of perspectives and submit its report prior to November 1, 2016. (Reference Appendix A: House Committee on Corrections letter to Brad Livingston, Former Executive Director, TDCJ)

The House Committee on Corrections also requested an expansion of the committee scope to address questions related to the following:

- Whether current funding allocations are equitable, directed in proportion to the level of needs and caseload demands;
- Whether current funding allocations are incentivizing best practices and reduced number of revocations;
- Whether funding formulas meet the needs of historically underserved communities;
- Whether the funding formulas promote successful probationer outcomes, not just meet CJAD-defined performance criteria; or
- Whether formulas reduce the over-reliance on probation fees.

As such, the committee expanded its membership and identified additional objectives for review and study during the course of the project. (Reference Appendix B: CSCD Funding Committee Membership and Activities)

### Objectives

The CSCD Funding Committee established the following objectives:

- Study the use of performance based funding formulas, including using an offender's risk level or other appropriate factors
- Provide that funding allocations are equitable
- Incentivize best practices
- Reduce the number of revocations
- Meet the needs of historically underserved communities
- Promote successful probationer outcomes
- Reduce over-reliance on probation fees

### Background

To study and understand funding for CSCDs in Texas, it is imperative to review the historical perspective of funding for the departments. Before the original state funding agency (Texas Adult Probation Commission, or TAPC) was created in 1977 (SB 39, 65<sup>th</sup> Texas Legislature), probation services in the state were primarily funded through the counties and revenue from collection of probation supervision fees. In 1986, adult probation departments received state funding assistance provided by TAPC if they elected to participate in the state system and comply with state guidelines. At that time, 110 of 117 adult probation departments in the state chose to participate, representing more than 98% of the state's total probation population. Two primary sources of revenue paid for department probation services: misdemeanor/felony probation supervision fees, which accounted for about 40% of department funding on the average, and state aid distributed by TAPC, which accounted for approximately 60% of probation funding. TAPC distributed two basic forms of funding to participating departments— per capita state aid and grants for special programs, services and residential facilities. During FY1986, basic per capita aid was calculated at \$0.75 per day for felony probationers and \$0.40 per day for misdemeanor probationers. TAPC also funded two types of grant programs—restitution center grants and special/supplemental grants.

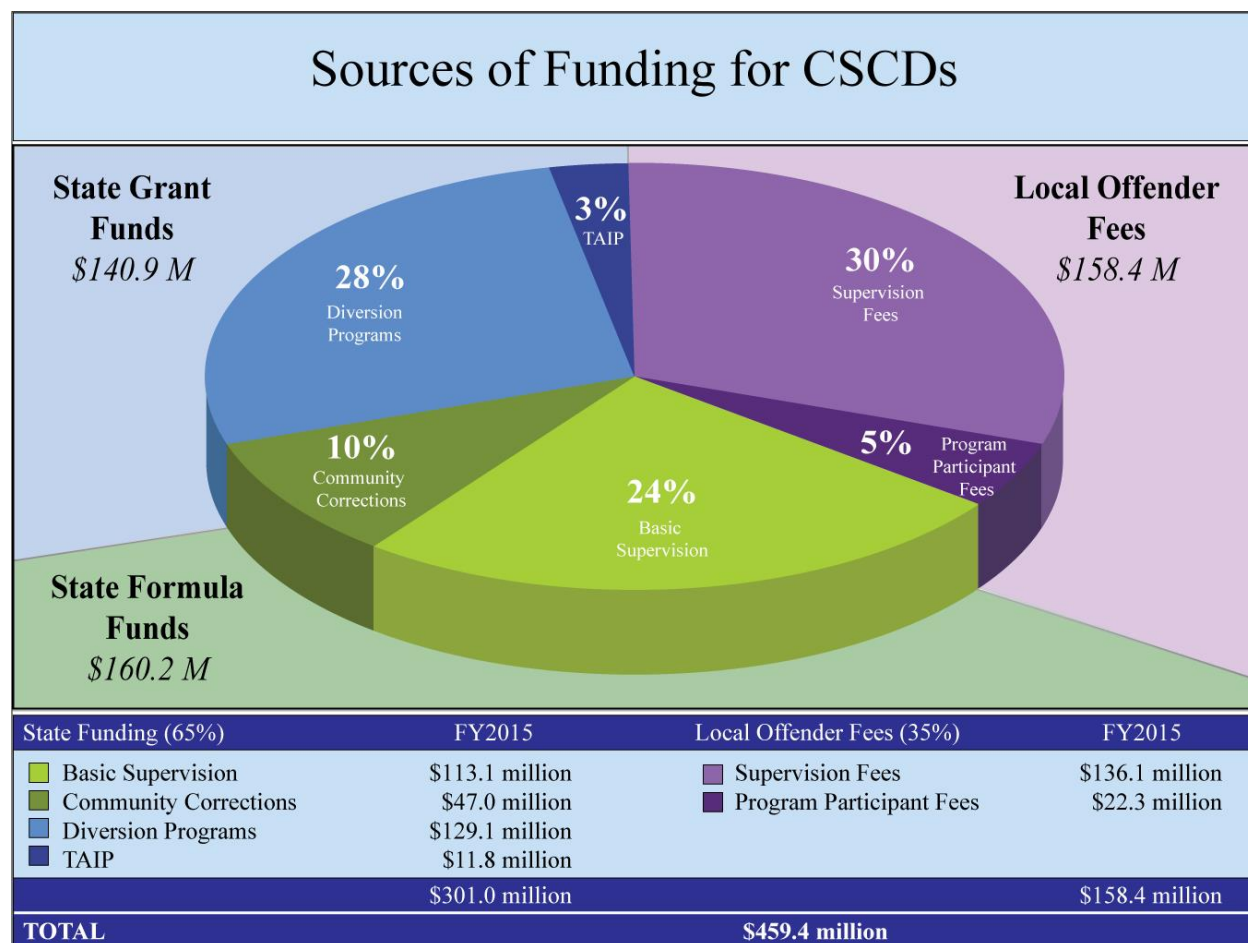
In the mid-1980's, approximately 1,800 probation officers statewide provided direct supervision to an average of 74,000 felons and 98,000 misdemeanants. From its inception, TAPC commissioners and employees considered their functions as a judicial branch agency. In 1986, the Texas Sunset Advisory Commission recommended that state executive interests should also be represented in TAPC operations because TAPC was responsible for managing a portion of the state's potential prison population and oversaw state funds passed through to local probation departments.

The question of judicial or executive branch function was clarified in 1989, when the Texas Department of Criminal Justice and the Texas Board of Criminal Justice were created (HB 2335, 71<sup>st</sup> Texas Legislature). This new agency absorbed the functions of three agencies: the Department

## CSCD Funding Review & Recommendations

of Corrections, the Board of Pardons and Paroles, and TAPC. TAPC became the Community Justice Assistance Division of TDCJ on January 1, 1990. The first full year after consolidation, the three state funding strategies for the adult probation departments included \$62M for Basic Supervision, \$50M for Community Corrections and \$27M for Diversion Program grants. 114 of 124 CSCDs were in compliance with state standards for CSCDs and received state funding to accomplish their mission of supervising offenders in the local community. Additionally, approximately 2,800 probation officers statewide provided direct supervision to an average of 115,000 felons and 101,000 misdemeanants in FY1991 at a cost per day of \$1.62.

As the Texas criminal justice system grew over time, various legislative bodies strengthened community supervision and infused targeted funding into the system. Such funding provided specialized resources for offenders with mental impairments, substance abuse issues, and high risk needs. Targeted funding also supported basic probation infrastructure and provided for pay increases for probation officers who were responsible for direct offender supervision and program delivery. See the chart below for FY2015 Sources of Funding for CSCDs. The amount of supervision fees collected by CSCDs is included, reflecting a percentage split of 65/35 of state to local offender fee funding.



## CSCD Funding Review & Recommendations

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In FY2015, all 122 CSCDs received state funding and more than 3,200 certified community supervision officers statewide provided direct supervision to an average of 156,000 felons and 90,000 misdemeanants. CSCDs received \$1.05 per probationer for basic operational services (Basic Supervision only).

One funding committee objective was to identify funding strategies which reduced the probation departments' over-reliance on probation fees. As previously identified, even prior to the creation of a state oversight agency, probation departments collected offender fees as a method of finance for community supervision as a whole. Fee collection was first authorized in 1967, when the 60<sup>th</sup> Texas Legislature passed SB 145, which allowed a court granting probation to assess a fee not exceeding \$10 per month; the bill also states that the court may make payment of the fee a condition of granting or continuing probation. The General Appropriations Act for the 69<sup>th</sup> Texas Legislative session states, "It is the intent of the Legislature that in the distribution of per capita aid highest priority shall be given to judicial districts which meet caseload standards, or which are making reasonable efforts to reach caseload standards, as demonstrated by their staffing patterns, and which are matching the state's efforts to fund probation services through the collection of probation fees." Additionally, in its 1986 evaluation of TAPC, the Texas Sunset Advisory Commission recommended that the statute should require probation fees as a mandatory condition of probation, with a minimum monthly fee of \$25, while giving courts the ability to waive, reduce or suspend the fee in cases of financial hardship. The report specified that fees help defray some of the costs of supervision, but even with a maximum of \$40 per month at that time, variance existed in the fee amounts assessed by judges. This variance had the potential to create revenue issues for probation departments that depend on the fees, along with state funding, to pay for probation services. In 2001, the 77<sup>th</sup> Texas Legislature raised the \$40 maximum to \$60—still providing for judicial discretion. Even with this statutory provision, not all courts assess the maximum of \$60 per month. A survey of CSCD directors (Reference Appendix C: Funding Committee Survey of CSCD Directors) found the following regarding courts within their jurisdictions:

<b>Supervision Fee Amount</b>	<b>% of Courts</b>
\$00.00	0.00%
\$40.00	7.61%
\$50.00	14.62%
\$60.00	66.47%
Other amount	12.11%

Often probation supervision fees are categorized with court costs, fines and fees, and collectively called "probation fees." However, this use of terminology has created some misconceptions in community supervision about fee collections and the entities which benefit from offender payments. The 83<sup>rd</sup> Texas Legislature directed the Office of Court Administration (OCA) to examine existing fees and costs and determine whether they were necessary to accomplish its



targeted statutory purpose. OCA published a report on September 1, 2014 titled “Study of the Necessity of Certain Court Costs and Fees in Texas.”

As stated in the report, “While OCA has regularly compiled court costs and filing fees, this is the first comprehensive effort to collect:

- A listing of all court fees and costs;
- The authorizing statute(s);
- When the fees or costs are assessed;
- The types of cases in which the fee or cost is assessed;
- The limitation on courts in which the fee or cost can be assessed;
- The amount of the fee or cost;
- Whether there is a mandatory or discretionary imposition of the fee or cost;
- Where the fee or cost is deposited; and
- The stated statutory purpose for the fee or cost.”

For clarification between true “probation fees” and court costs, fines and fees, the OCA publication is an excellent resource which can provide perspective regarding the complexity of a court fee and cost system which has evolved over the course of two centuries. An examination and discussion of probation supervision fees is integral when examining probation department funding. As a part of community retribution, supervision fees have been a method of finance for probation since community supervision was first used in Texas. Institutionalized as a method of finance for departments, CSCD supervision fee collection now surpasses \$315M per biennium.

### Recommendations

CSCD funding recommendations are outlined in relation to the charges made to the committee. The first set of recommendations are relevant to the requirements outlined by Government Code Section 509.014 and primarily address funding formulas for the CSCDs. The second set of recommendations are relevant to the requirements outlined by the Texas House Committee on Corrections. Since the funding committee identified and studied seven objectives to produce this report, for ease of the reader, reference Appendix D: Matrix of Funding Recommendations by Objective. The committee ensured each recommendation was relevant to the overall funding objectives outlined previously.

#### **Funding Recommendations Pursuant to Government Code Section 509.014:**

- *Modify the current probation funding formula*
  - *Front load all felony offenses except those ineligible for early termination (ET)*
  - *Fully fund the first three years of supervision and reduce the next two years of supervision proportionately*

As previously noted, the Legislature has increased funding appropriations to CSCDs, including the formula funding lines. Additionally, the Legislature has emphasized an evidence based approach, requiring data to support new initiatives which help divert offenders from prison. These initiatives include mandatory review of offenders' compliance for early termination, shorter probation sentences and time credits for court-ordered program completion while under supervision. Not only have these initiatives provided incentives to defendants to be successful but they have also allowed CSCDs to dedicate funding to offenders still under supervision—who are those with higher risk and needs in the community. Also, those remaining under supervision are the offenders who struggle to pay supervision fees—which are a method of finance for the CSCDs. CSCDs are not paid for offenders who terminate early. In the past, lower level offenders on supervision for longer periods of time essentially helped fund services provided to higher level offenders remaining on supervision. In addition to this conundrum, judicial confidence and additional placements on probation have contributed to a different population than departments have previously supervised.

While beneficial to the state and communities in terms of outcomes, the CSCDs have struggled because formula funding to CSCDs continues to be based on the number of offenders supervised and the level of crime for which the offender was adjudicated. Research supports the premise that if offenders are going to reoffend, it will occur within the first two years of placement on supervision. Based on this research and discussion of funding scenarios for several methodologies, the funding committee recommends that all felony offenses be “front loaded” except those ineligible for early termination (ET). Front loading essentially means that CSCDs would receive a higher level of funding for the first three years while an offender is under supervision and then the funding level would be proportionately reduced for the next two years of supervision. Therefore, most probation cases would be funded for a maximum of five years; the exception includes offenses such as sex offenders and Driving While Intoxicated (DWI) that are ineligible for ET by a court. These exception offenses would be funded throughout the course of probation supervision. This funding strategy could further enhance community supervision's ability to reduce revocations and incarceration.

- *Retain current probation funding structure, if additional funding is not available to keep CSCDs “whole”*

The funding committee also recommended retaining the current probation funding structure unless the state provides additional funding to CSCDs. Changing the current funding structure, including the formula lines, without an infusion of additional funds only creates “new winners and losers” because it would result in a redistribution of the same amount of funding. For example, utilizing the current funding amounts, the formula derived for risk based distribution of funds to CSCDs would result in funding cuts to 76 CSCDs (62%) upon implementation. In the first biennium, it is estimated that at least 3 departments would have such devastating shortages that they would not be able to function



at their current level of service. This affect is magnified each funding cycle, with more than 15% of departments experiencing significant funding shortfalls by the third biennium, resulting in an inability to operate at their current levels. If substantial reductions in state revenue occurred as a result of formula modification, probation departments would turn to their other primary method of finance to support the system—offender fees. State revenue losses for individual CSCDs creates more underserved communities and potential increases in prison admissions due to a lack of available services. The majority of funding committee objectives would not be met if the funding formulas were revised without an infusion of state funding to hold CSCDs “harmless”. The current funding formula structure has existed for over 25 years and, while not ideal in many respects, CSCDs have grown accustomed to this structure and adjusted budget/expenditure practices accordingly. As the Texas Sunset Advisory Commission stated in its July, 2013 report, “Any changes to the funding formulas would need to be carefully considered, since they could significantly affect CSCD funding, and community supervision success and revocation rates, posing a potential risk for subsequent increases in prison and state jail populations.” The Texas criminal justice system remains in a state of balance and altering the probation funding formulas without consideration for additional funding would create unintended consequences for the overall system.

### **Additional Funding Recommendations Pursuant to House Committee on Corrections Directive:**

- *Increase Aftercare Supervision And Treatment Following Residential Treatment in Community Corrections Facilities*

TDCJ-CJAD funds 28 Community Corrections Facilities (CCFs) with more than 2,900 residential beds available to CSCDs for alternatives to incarceration. Depending on the facility, offenders receive substance abuse treatment, mental health services, and/or sanctions for probation violations. CCFs’ missions and objectives are tailored to the needs in the local jurisdiction and may include skills training, a work component or educational classes. As an intensive alternative to incarceration, research indicates that aftercare supervision and treatment are critical to continued success of offenders completing the programs. This recommendation would provide for additional aftercare supervision caseloads, group treatment and individual counseling following completion of a CCF program. In support of evidence based practices, reduced caseloads need to be accompanied by increased field visits and collateral contacts. Additionally, reentry issues such as housing, employment, family and transportation must be addressed because the offenders have been removed from their respective communities while attending their court ordered residential programs. To ensure funding is equitable across departments, funding for aftercare could be awarded to each jurisdiction that orders offenders into these programs; then the aftercare services would be administered within each of the offenders’ home communities. Additional funding for supervision and treatment services ensures appropriate dosage is delivered while providing for flexibility to move throughout a

continuum of treatment and monitoring technology. This recommendation supports the development of rapport and relationship between the offender and the supervision officer in their home community which, in turn, leads to better outcomes and lower recidivism rates.

Evaluation of CCFs revealed that certain types of facilities were not effective. These types of facilities, such as boot camps and restitution centers, were either closed or repurposed to ensure state funding supported successful outcomes. Since the CCFs are grant funded, other CSCDs which use these statewide residential treatment services do not have to pay for offenders placed within the program. As expansion of existing aftercare supervision and treatment would allow all jurisdictions to offer this important component of treatment, which contributes to positive statewide outcomes and reduced revocation rates. This recommendation is important to CSCDs and the state, as a whole, because in a treatment continuum of care, the more restrictive the treatment environment, the greater the need for structured transition back into the community through aftercare and differential supervision.

- *Increase Funding For Resource Intensive Specialized Populations*

Resource intensive specialized populations include offenders who were court ordered to an electronic monitoring device, such as global positioning satellites, or offenders under supervision for sex offenses or DWI offenses. By statute, sex offenders and DWI populations are ineligible for early termination of supervision and have additional state mandates such as ignition interlock, education classes and sex offender registration. Monitoring these additional state mandates for each probation case requires a significant amount of resource dedication. Additionally, electronic monitoring devices require daily extraction of data from non-uniform vendor systems and careful analysis by well-trained officers to detect tampering and attempts to bypass the devices. Increased funding, via a per diem rate, for these resource intensive specialized populations would make funding more equitable across the probation system because funding would not be based solely on grant availability. Additionally, a state provided per diem rate would reduce CSCDs' reliance on probationer fees for caseloads which need to be smaller in order to be truly monitored and effective; as noted, offenders on these caseloads have state mandates but they often have other court conditions and criminogenic needs requiring treatment, group/individual counseling, collateral contacts, polygraphs and substance monitoring. By identifying violations of probation conditions earlier under supervision and addressing those as quickly as possible, officers have the ability to change behavior before it escalates to the point of revocation. These particular cases are also generally supervised at a higher level because of judicial expectation and public perception. Overall successful outcomes are promoted through revocation reduction and sustainable supervision treatment which includes monitoring of resource intensive offenders.

- *Fund Misdemeanors At The Same Level As Felonies*

Funding for misdemeanor cases should be calculated the same as for felony cases—based on direct supervision and the term or length of probation. Government Code Sec. 509.011 and the General Appropriations Act require that TDCJ-CJAD distribute funds for misdemeanor offenses at the rate of \$.70 per day for 182 days. Misdemeanor terms of probation vary in jurisdictions from 6 months to 24 months. The total funding amount of \$127.40 per misdemeanor offender is provided at placement, therefore CSCDs do not have an incentive to accept misdemeanor transfer cases from another jurisdiction. Fully funding the term for direct supervision would ensure allocations are equitable from jurisdiction to jurisdiction and facilitate the transfer and acceptance of cases by the county of the defendant's residence where supervision officers can address the defendant's needs.

Current funding allowances are not adequate to address the criminogenic needs of this population, especially since individuals may be charged with a felony offense but plea down to misdemeanor probation. Additionally, all DWI 3<sup>rd</sup> offense defendants had two former misdemeanor convictions. Misdemeanor and felony cases are not supervised differently based on level of offense. Instead cases are supervised based on a validated criminogenic assessment process; therefore a high risk misdemeanor offender would be supervised at the same level as a high risk felony offender. Fully funding these cases would ensure resources for a population in need of evidence based programs, such as cognitive behavioral and offender education programs, while preventing an increased reliance on offender paid supervision fees.

Limiting funding to 6 months of supervision encourages CSCDs and county run collections departments to push defendants to pay all court ordered monies, including court costs, fines, fees and restitution, during that short time frame instead of the full term length of probation which may create a hardship on offenders under supervision. Furthermore, funding for this population intervenes earlier in the criminal cycle and provides supervision/resources for labor intensive cases. This recommendation reduces the number of revocations by incentivizing best practices and allows the CSCDs to focus on addressing the needs of the defendant to prevent recidivism and promote successful outcomes.

- *Fund Felony and Misdemeanor Diversion At The Same Rate As Traditional Probation*

Over time, while several categories of defendants have been added under the supervision auspices of adult probation, funding for community supervision has remained targeted and limited. A policy decision by TDCJ-CJAD allows state funding for pretrial diversion resulting from court placement on CSCD supervision. Misdemeanor diversion has not been included within this category. Pre-trial diversion cases have progressively increased, from 1,100 felons and 4,900 misdemeanants in 2005 to 3,000 felons and 10,300 misdemeanants in 2016. To include these categories to the current funding streams would dilute the overall funding needed for the main offender supervision categories: felons and misdemeanants.

Pretrial diversion offers an opportunity that is consistent with national and state initiatives to minimize the “criminalization” of lower level offenses, but some jurisdictions use it more than others. Those departments using pretrial diversion need resources to compensate for the cost of supervising these cases; implementation of this recommendation would equalize funding for departments with jurisdictions that take advantage of this sentencing alternative while meeting the needs of underserved communities. Diverting defendants from the criminal justice system motivates individuals to comply and maintain prosocial attributes without detrimental consequences of traditional supervision such as stigma, unemployment, licensing limitations and long-term costs. Pretrial diversion also allows defendants to qualify for expunction, which further avoids entry into the criminal justice system. Providing funding in the initial stages of the system for pretrial diversion supervision incentivizes best practices and provides for additional services for a population that can be diverted early in the criminal justice system.

### **Efforts to Improve Resource Allocation**

The community supervision field continually examines funding strategies within probation. Identified resource limitation, changing probation population and supervision/treatment needs have necessitated a periodic evaluation of methods of finance for adult probation. The TDCJ-CJAD and the CSCD directors have collaboratively worked on this endeavor for approximately 7 years. As such, the following initiatives have been instituted within adult probation to improve resource allocation while providing for offender supervision/rehabilitation and maintenance of public safety. This report does not represent an exhaustive list of initiatives, projects, pilots and research that have been undertaken by adult probation stakeholders to improve resource allocation in Texas.

### **Grant Process Improvement Committee**

Approximately 5 years ago, a specialized committee comprised of CSCD Directors and TDCJ-CJAD employees realigned the special grant conditions (SGCs) for Diversion Programs (DP) with current evidenced based practices. The critical elements of community supervision such as assessment, case planning, contact standards, and treatment are contained within the SGCs and are connected to research findings that provide guidance for program implementation. This major paradigm shift moved TDCJ-CJAD away from imposing theoretically sound but impracticable standards of community supervision, and toward assisting departments to use their resources in a manner that is best suited for their population.

Subsequently, the committee reviewed the current grant process to identify improvements on both sides of the process. For the first time TDCJ-CJAD provided full transparency of the grant process to ensure a full critical review of each component for which the departments were held accountable. Improvement to the SGCs, grant application and award process was embraced by the state and the local probation departments, which prompted CSCDs to apply for grant funding when they had been reluctant in the past.

### **Increased Scrutiny of CSCD Expenditure Utilization**

Although TDCJ-CJAD has historically monitored CSCD expenditures, the state instituted a process to more closely identify funding that could be deobligated from some CSCDs and reobligated to other CSCDs. This increased scrutiny of CSCD expenditure utilization allowed departments to return unused funds to the state for disbursement to departments with unfulfilled needs. As a result, some CSCDs began to monitor their programs at a higher level which ensured funding was fully used in a timely manner or voluntarily returned to the state for disbursement.

### **Organizational Development**

Through a specialized Summit designed especially for adult probation, over 200 CSCD staff members from 53 CSCDs worked with internal teams to either create, revise or hone departmental vision, mission and organizational goals. Additionally, evidence-based principles of organizational development and collaboration within local jurisdictions were emphasized.

### **Research-based Decision Making**

As a component of the Summit noted above, CSCDs were trained and encouraged to use their own data to educate stakeholders in their local communities. Some CSCDs were able to provide local judges and commissioners with statistics showing benefits gained in the community from CSCD based initiatives. By statute, county contributions to the adult probation departments include utilities, facilities and equipment, but several departments were able to clearly articulate how the CSCD could benefit the county, and therefore secure additional monetary or in-kind contributions to support the CSCD's operational budget.

### **Texas Risk Assessment System (TRAS)**

Adult probation began reviewing a process to improve its existing assessment system in 2007. Extensive committee work resulted in an assessment system that was adopted and validated on the adult probation population. Prison, parole, and re-entry adopted the system as well, thus establishing a criminogenic assessment that is utilized throughout TDCJ. This improvement in assessment processes provided an opportunity to better manage the offender population according to risk and need, which ultimately reduces recidivism and contributes to public safety.

### **Strategic Planning**

Strategic planning for community corrections replaced an outdated modality of community justice plans. TDCJ-CJAD began piloting strategic planning with the CSCDs prior to the passage of HB1930 during the 84<sup>th</sup> Texas Legislature. This legislation enabled TDCJ-CJAD to condense the requirements for program narratives and place more emphasis on assisting CSCDs to further use their own data to plan and move their departments forward. Additionally, the process established a planning tool that utilizes offender data so that jurisdictions can proactively identify resources for their specific population. The strategic planning process also requires internal audits, including caseload and fiscal reviews. Each department must include state goals of revocation reduction and technical revocation reduction in its plan. At this time, local goals are optional and defined by

each of the probation departments. Overall, the strategic plan is a living document which outlines achievement of effectiveness.

### **Specialized Pilots and Research Projects**

TDCJ-CJAD has targeted a limited amount of diversion program grant funding to support specialized pilots and research projects within the probation departments. Using results from these investments has enabled the state and local jurisdictions to improve supervision and programs offered to offenders under supervision. In some instances the CSCDs have been able to leverage state funding to secure federal or private funding for these initiatives.

### **Program Reviews and Audits**

For many years, TDCJ-CJAD audited the departments based on state statutes and standards established for the departments. Audits found that probation officers were performing well at meeting standards regarding the number of offender visits per month, and time frames for completing assessments, case plans, and entering/closing out cases. Although these elements are critical for process evaluation, they have not been found to correlate with reduced recidivism in outcome evaluations. Therefore, TDCJ-CJAD changed its program reviews and audit processes to include evaluation of how an officer uses an assessment, when a referral follow-up is conducted and whether a case plan targets criminogenic needs identified in the TRAS. Audit objectives for grant funded programs are tied directly to the aforementioned research-based SGCs, further ensuring that the TDCJ-CJAD auditors are focused on evaluating the quality of the officer's work. Movement toward evaluation of a case, in its totality, requires additional skill on the part of audit staff and more time for the audit itself. While process evaluation is still a valuable tool, more meaningful evaluations of quality casework are critical to directors of CSCDs so they can ultimately improve outcomes at the local level.

### **Summary**

The CSCD Funding Committee was tasked with reviewing state funding formulas for the probation departments while considering best practices, reduced revocations, needs of historically underserved communities, successful probationer outcomes, over-reliance on probation fees and the equitability of funding allocations. Culmination of more than two years worth of meetings, conference calls, webinars and stakeholder input resulted in the recommendations outlined in this report. The CSCD Funding Committee would like to acknowledge and express appreciation to the 83<sup>rd</sup> Texas Legislature and the 84<sup>th</sup> Texas Legislature's House Committee on Corrections for their interest in reviewing funding for the CSCDs. Based on the Texas Legislature's direction, the funding review committee established the seven objectives and made the following recommendations:

- Modify the current probation funding formula
  - Front load all felony offenses except those ineligible for early termination (ET)

## CSCD Funding Review & Recommendations

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- Fully fund the first three years of supervision and reduce the next two years of supervision proportionately
- Retain current probation funding structure, if additional funding is not available to keep CSCDs “whole”
- Increase aftercare supervision and treatment funding following residential treatment in community corrections facilities
- Increase funding for resource intensive specialized populations
- Fund misdemeanors at the same level as felonies
- Fund felony and misdemeanor diversion at the same rate as traditional probation

Although this study was originally conceptualized in the Texas Sunset Advisory Commission’s report dated July 2013, the content contained within should be considered a starting point for discussion for system improvement regarding funding for community supervision—which continually maintains an underlying mission of public safety.

**Appendix A: House Committee on Corrections Letter to Brad Livingston,  
Former Executive Director, Texas Department of Criminal Justice**



JIM MURPHY  
CHAIRMAN

JAMES WHITE  
VICE-CHAIRMAN

### HOUSE COMMITTEE ON CORRECTIONS

P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910

LAURIE MCANALLY  
COMMITTEE CLERK

ROOM E2.110

512-463-0796

May 4, 2015

Brad Livingston, Executive Director  
Texas Department of Criminal Justice  
209 West 14th Street  
Austin, TX 78701



Dear Mr. Livingston:

On April 16, the House Committee on Corrections heard testimony on HB 2869 by Representative Allen, relating to the creation of an advisory committee to study issues related to community supervisions and corrections departments. Several issues came to light, and it became clear that the existing efforts to study the funding allocation formulas may require additional direction. To that end, we respectfully request that you modify the existing committee structure, scope, and timeline in the following manner:

1. Pursuant to Section 509.014 of the Government Code, a committee was formed to "review the Community Justice Assistance Division (CJAD) funding formulas. A concern raised in the committee was that the scope of the existing committee may not be sufficiently broad to encompass the full complexity of interconnected issues. Specifically, stakeholders were concerned that several issues may be left unaddressed, including:
  - Whether current funding allocations are equitable, directed in proportion to the level of need and caseload demands;
  - Whether current funding allocations are incentivizing best practices and reduced number of revocations;
  - Whether funding formulas meet the needs of historically underserved communities;
  - Whether the funding formulas promote successful probationer outcomes, not just meet CJAD-defined performance criteria; or
  - Whether formulas reduce the over-reliance on probation fees.

We would respectfully request that you expand the scope of the existing committee to address these important questions. We ask that the committee include recommendations in its report that encompass the issues described above.

2. Additionally, the hearing raised concerns that certain stakeholders may have been inadvertently excluded from the process of studying community supervision funding. We respectfully request that you expand the membership of the existing committee to include a wider diversity of perspectives.

#### MEMBERS:

ALMA A. ALLEN, MARK J. KEOUGH, MATT KRAUSE, LEIGHTON SCHUBERT, TONY TINDERHOLT

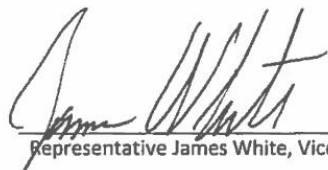
Rather than direct you to include someone from every group mentioned below, we offer the following list as suggested additions to the existing committee:

- Experts in mental health, substance abuse, or post-traumatic stress disorder.
  - A diverse range of community supervision and corrections department directors with knowledge of existing disparities in funding and grant awards;
  - Representatives from criminal justice advocacy and reform groups;
  - A wider diversity of representatives with knowledge of the criminal court system, such as judges, district attorneys, and defense attorneys with a deep understanding of evidence-based practices that lead to decreased revocations and lower levels of recidivism; and
  - Individuals who have successfully completed community supervision.
3. Finally, we request that you make every effort to submit recommendations prior November 1, 2016. This will give the Legislature ample time to consider potential solutions, and develop them into legislation. Perhaps with a larger array of stakeholders, this may be an opportunity to divide issues among sub-committees in order to meet a more ambitious deadline.

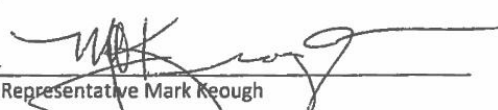
Thank you for your efforts to develop community supervision funding strategies to promote the best outcomes with regard to grantee performance, lowered recidivism rates, and efficient use of state resources. Please feel free to contact Chairman Murphy with questions or concerns about the expanded scope of the performance-based funding study.

Sincerely,

  
Representative Jim Murphy, Chairman

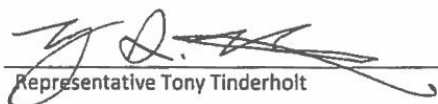
  
Representative James White, Vice Chair

  
Representative Alma Allen

  
Representative Mark Keough

  
Representative Matt Krause

  
Representative Leighton Schubert

  
Representative Tony Tinderholt

## **Appendix B: CSCD Funding Committee Membership and Activities**

### **Committee Membership**

Original members of the committee included:

- Arnold Patrick, Director, Hidalgo County CSCD (Committee Co-Chair)
- Carey A. Welebob, Director, TDCJ-CJAD (Committee Co-Chair)
- Terry Easterling, Director, Potter County CSCD
- Leighton Iles, Director, Tarrant County CSCD
- Teresa May, Director, Harris County CSCD
- Michael Wolfe, Director, Taylor County CSCD

In its letter to the TDCJ Executive Director, the House Committee on Corrections asked that the committee expand its membership to include a wider variety of perspectives, and the following committee members joined:

- Judge George D. “Jody” Gilles, 142nd District Court, Midland
- Judge Rose Guerra Reyna, 206th District Court, Edinburg
- Judge Angela Tucker, 199th District Court, McKinney
- Belinda Hill, First Assistant District Attorney, Harris County
- Scot Courtney, Defense Attorney, Hays County
- Roxane Marek, Director, Matagorda County CSCD
- Christopher Thomas, Director, Jasper County CSCD
- Rochelle Thomas, Director, Caldwell County CSCD
- Manny Rodriguez, Deputy Director, TDCJ-CJAD
- April Zamora, Director, TDCJ Reentry and Integration Division

### **Committee Activities**

From the September 1, 2013 effective date of Senate Bill 213 to the present, members of the CSCD funding committee have convened meetings or given presentations and updates about the committee’s activities in several different forums:

- Informational webinar about legislation passed by the 83rd Texas Legislature, including SB 213
- Funding 101 webinar for committee members
- Multiple in-person committee meetings and work sessions, including input from non-committee CSCD directors
- Solicitation for public input which resulted in testimony from the Texas Criminal Justice Coalition

## **CSCD Funding Review & Recommendations**

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- Focus group discussions at the Chief Probation Officers Conference
- Judicial Advisory Council and Probation Advisory Committee quarterly meetings
- Briefing with Legislative Budget Board staff
- Two day workshop with judiciary from CSCDs that were represented on the funding committee
- “Coffee with Carey” informal webinars with CSCD directors
- Briefings with TDCJ Executive Administration
- Formal survey of 122 CSCD directors (Reference Appendix C: Funding Committee Survey of CSCD Directors)

### **Appendix C: Funding Committee Survey of CSCD Directors**

1. Please indicate how many courts within your jurisdiction initially charge each of the monthly supervision fee amounts below:

- \$00.00
- \$40.00
- \$50.00
- \$60.00
- Other

2. How much do you typically budget/pend per year for indirect cases, including salaries?

3. How many cases per year reported as indirect are actually supervised in your department as “direct” cases?

4. How much money do you expend on CSR each year?

5. Please complete the following information (if FY15 4<sup>th</sup> quarter costs are not available, please estimate to provide a FY amount); do NOT include any funding related to bonds, civil cases, or outside grants:

FY2014 Offender Paid:

- Supervision Fees
- Program Participant Fees

FY2015 Offender Paid:

- Supervision Fees
- Program Participant Fees

FY2014 CSCD Paid:

- Contract Services to Outside Vendors
- Services Provided In-House

FY2015 CSCD Paid:

- Contract Services to Outside Vendors
- Services Provided In-House

6. List services for which offenders pay vendors directly or reimburse the CSCD

7. During the FY2014-2015 biennium, how many direct offenders supervised by your CSCD (number of people served) had felony cases reduced to misdemeanors?

8. If you are having difficulty maintaining sufficient funding for referral sources for offenders, what do you do to meet the needs of your offender population?

## Appendix D: Matrix of Funding Recommendations by Objective

The following table summarizes the relationship between the funding committee’s stated objectives and each recommendation outlined in the report:

Recommendations	Objectives						
	Study Funding Formulas	Equitable Funding Allocations	Incentivize Best Practices	Reduce Revocations	Historically Underserved Communities	Successful Probationer Outcomes	Over-Reliance on Fees
Modify current probation funding formula	X	X	X	X	X	X	X
Retain current funding structure if additional funding is not available to keep CSCDs “whole”	X						
Increase aftercare supervision and treatment funding following residential treatment in community corrections facilities		X	X	X	X	X	
Increase funding for resource intensive specialized populations		X	X	X	X	X	X
Fund misdemeanors at the same level as felonies		X	X	X	X	X	X
Fund felony and misdemeanor diversion at the same rate as traditional probation		X	X	X	X	X	X



TEXAS  
JUVENILE★JUSTICE  
DEPARTMENT

# House Appropriations Hearing

*Subcommittee on Articles I, IV, & V*

Camille Cain, Executive Director  
April 18, 2018

# Current Efforts and Plans



# Our Goals

We will strive for a single system approach that meets the needs of each young offender

## **We envision a juvenile justice system that:**

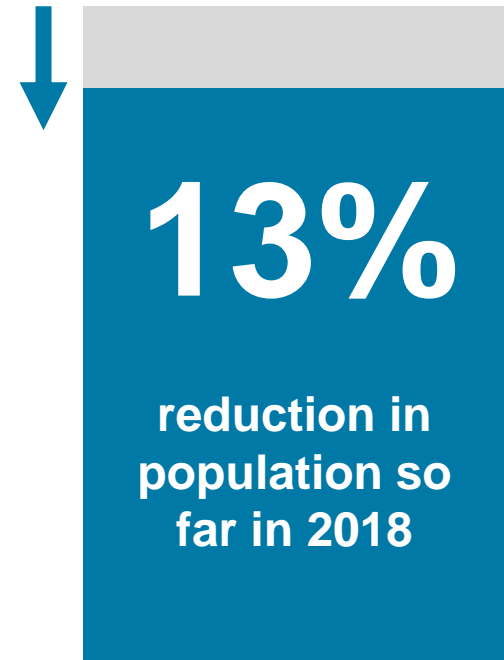
- Protects Texans by reducing future crime
- Embraces a single system approach with the state, counties, and other stakeholders working and leading together
- Holds youth accountable for behavior and intervening with that behavior through pragmatic, science and evidence-based approaches
- Keeps young offenders as shallow in the system as is appropriate
- Is flexible and scalable to meet emerging changes and system needs
- Supports flexibility and local control
- Is accountable for specific, agreed upon outcomes

# Current Efforts

During the past three months a major focus has been on safety

## High staff-to-youth ratios are a critical problem

- Reduced population from 1026 near end of 2017 to a historic low of 889 on April 6th
- Increased JCO presence and improved safety by shifting gate security to the OIG
- Implementing body cameras in the five facilities to improve safety and shorten time for investigations
- Improving training and leadership skills



# Some Current Changes

Our current focus is on operational issues that affect safety

<b>Gate and perimeter security</b>	<ul style="list-style-type: none"><li>• Moving responsibility for gate house operations to the Office of the Inspector General where it can be overseen by their TCOLE-certified law enforcement officers. This will allow JCOs to remain focused on their primary responsibilities.</li></ul>
<b>Body cameras</b>	<ul style="list-style-type: none"><li>• Full use of body cameras will immediately impact safety and security by allowing for quicker and more effective review of complaints.</li></ul>
<b>Population reduction</b>	<ul style="list-style-type: none"><li>• Through more proactive case reviews, we are discharging youth who should no longer be in our secure facilities. So far, these actions have brought our population to historic lows from 1026 on December 21, 2017 to a low of 889 on April 6, 2018.</li><li>• Reviewing other strategies, including better alignment of treatment to ensure the our internal scheduling of treatment does not cause youth to stay longer than needed.</li></ul>
<b>Increase JCOS available</b>	<ul style="list-style-type: none"><li>• Adjusted background check requirements to further screen JCOs.</li><li>• Adding leadership and coaching training for JCOs at all levels to improve supervision and encourage retention.</li><li>• Improving and modernizing scheduling methods.</li></ul>

# Current Efforts

## Looking forward to future reform

- We are taking a system-wide approach
- Ongoing meetings with a large number of diverse stakeholders
- Working with data and researchers to understand our population at a deep level to predict future needs
- Determining needs and timelines for smaller facilities dispersed across the state
- Reviewing science and best practice to find pragmatic solutions to our problems
- Exploring complex trauma and child sex trafficking survivors within our population

# Future Reform

We are committed to improving our response to youth at the high-end of the system and bringing them closer to their families

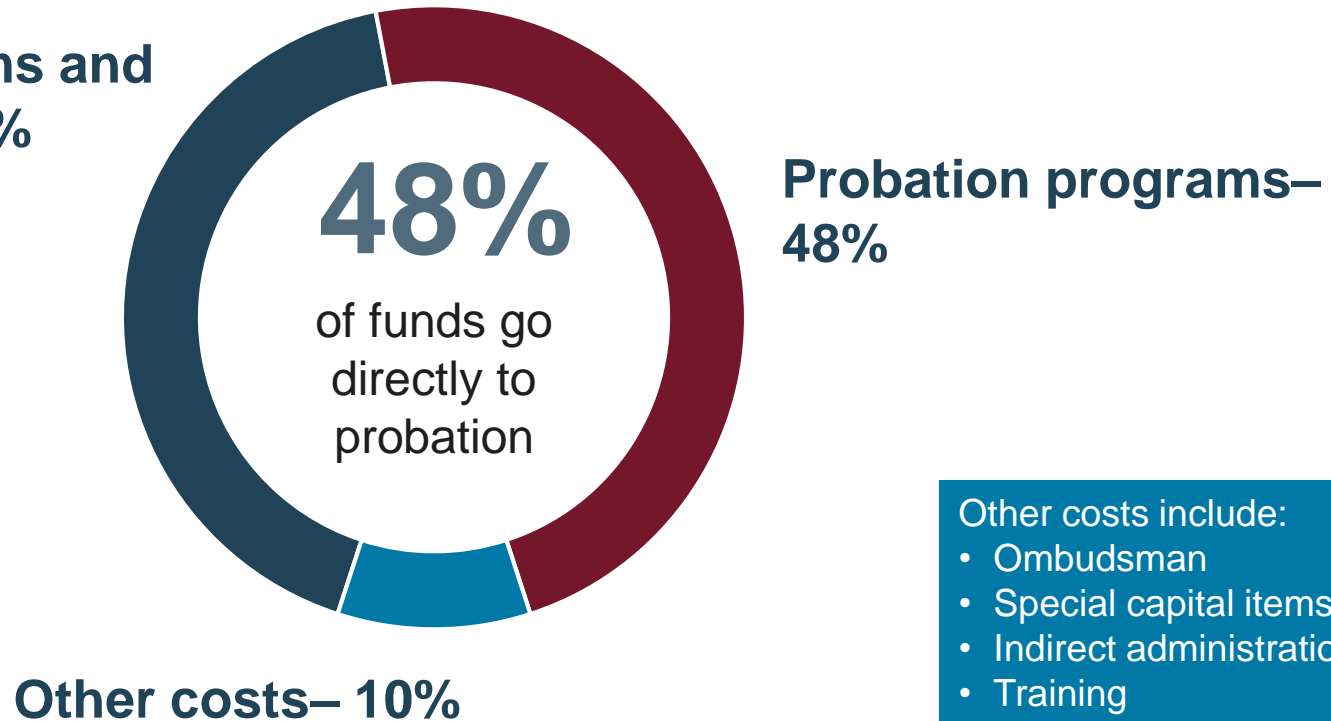
- Movement towards new facilities will take time but we must commit to a timeline.
- Costs will increase before they decrease as we bring new options online but before any existing option can go offline.
- We will be working on options and recommendations for reform of both the geography and the principles of interventions with youth.
  - At the high end, many youth have intense mental health, trauma, or other issues or extraordinarily violent tendencies. We must ensure adequate specialty resources for all.
  - Using researchers and our data to determine types and needs of youth and project future needs.
  - We will likely need to consider a hybrid set of options that includes increased local capacity, public-private partnerships, and new facilities.

# Funding

# 2018-2019 Appropriations Overview

State-controlled and county-controlled funds split roughly 50-50

**State programs and facilities – 42%**



**Probation programs—48%**

**Other costs— 10%**

Other costs include:

- Ombudsman
- Special capital items
- Indirect administration
- Training
- Monitoring
- Parole

(Serves both state and probation)

# Appropriations for Probation Programs

## Legislative methods for setting funding levels

- TJJD's "Community Juvenile Justice" goal includes all funding for probation grant programs, and core administrative activities for these programs
- Historically, appropriations in Strategy A.1.2, Basic Probation Supervision, have been set using a formula calculation: *(projected population) x (a cost per day) x (days in the year)*
  - This is the only probation strategy that has used a formula-based process
- Once the appropriation is made, TJJD allocates funds to programs / recipients

### A. Goal: COMMUNITY JUVENILE JUSTICE

<b>A.1.1. Strategy:</b> PREVENTION AND INTERVENTION	\$	2,812,177	\$	2,812,177
<b>A.1.2. Strategy:</b> BASIC PROBATION SUPERVISION	\$	35,778,526	\$	35,915,398
<b>A.1.3. Strategy:</b> COMMUNITY PROGRAMS	\$	44,900,650	\$	44,900,650
<b>A.1.4. Strategy:</b> PRE & POST ADJUDICATION FACILITIES	\$	24,782,157	\$	24,782,157
Pre and Post Adjudication Facilities.				
<b>A.1.5. Strategy:</b> COMMITMENT DIVERSION INITIATIVES	\$	19,492,500	\$	19,492,500
<b>A.1.6. Strategy:</b> JUV JUSTICE ALTERNATIVE ED PROGRAMS	\$	6,250,000	\$	6,250,000
Juvenile Justice Alternative Education Programs.				
<b>A.1.7. Strategy:</b> MENTAL HEALTH SERVICES GRANTS	\$	12,804,748	\$	12,804,748
<b>A.1.8. Strategy:</b> REGIONAL DIVERSION ALTERNATIVES	\$	9,139,405	\$	9,139,405
<b>A.1.9. Strategy:</b> PROBATION SYSTEM SUPPORT	\$	2,758,113	\$	2,758,112
<b>Total, Goal A:</b> COMMUNITY JUVENILE JUSTICE	\$	158,918,276	\$	159,055,147

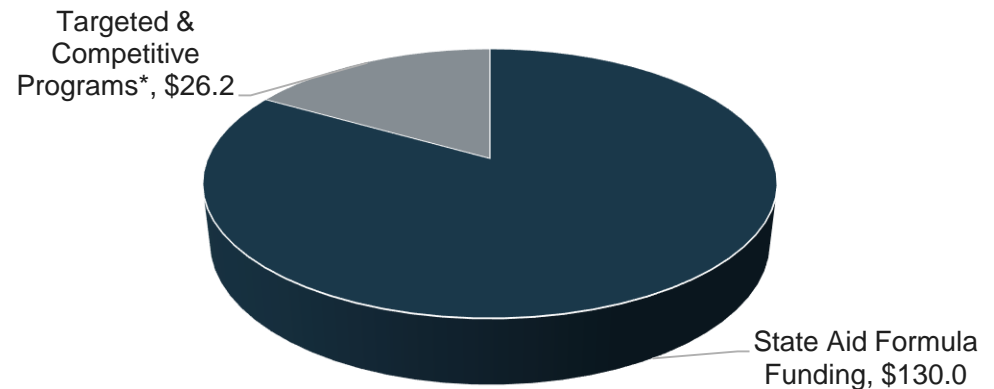


# TJJD Grants to Probation Departments

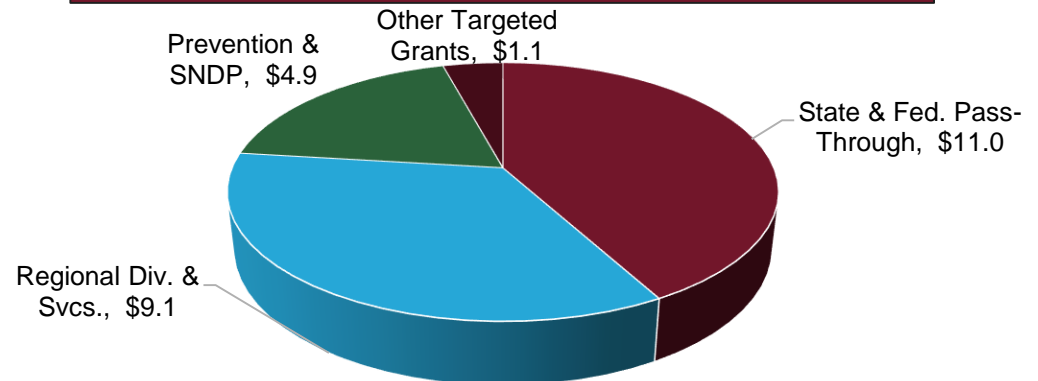
FY18: \$156.2 million in all funds

Appropriations for probation grant programs are fully allocated to probation departments

**All Probation Grant Programs (\$ mil)\***



**Targeted & Competitive Programs Detail (\$ mil)\***



*\*An additional \$1.8 mil under the competitive Discretionary State Aid program was awarded in FY 2017 with a grant period that covers FY 2018. With these funds, state probation grants available in the current fiscal year total \$158.0 mil.*

# State Aid Formula Funding

Current funding methods could benefit from streamlining and simplification

- The bulk of probation funds (80-85%) is allocated through the State Aid Formula Funding program; remaining funds exist for specific purposes and may not be awarded to all departments
- The key inputs to TJJD's calculation of State Aid Formula Funding are juvenile population in the jurisdiction, number of referrals, and historical funding levels
  - This program draws from five appropriations sources, with four to eight expenditure categories allowable under each source

Expenditure categories	Basic Probation Supervision	Community Programs	Pre & Post Adjudication	Commitment Diversion	Mental Health Services
Court Intake	✓	✓			
Direct Supervision	✓				
Youth Services	✓	✓		✓	
Mental Health Assessments	✓	✓	✓	✓	✓
Comm-Based Programs (Gen.)		✓		✓	
Comm-Based Programs (MH)		✓		✓	✓
Residential Programs & Services			✓	✓	✓
Post-Adjudication (NS)			✓	✓	
Post-Adjudication (S)			✓	✓	
Detention/Pre-Adjudication			✓		
Residential Mental Health Plcmnt			✓	✓	✓

*Funding structure is overly complex*

**FY18: \$130.0  
million in all funds**

# Scope and Purpose of State Operations

Initial investments in new residential options will cost more in the beginning and save money in the longer term

- The current state population is very diverse, both in terms of raw numbers and the range of youths' needs.
- TJJD's stakeholder-driven process will help inform legislative efforts to refocus the agency's future role in residential services for delinquent youth.
- Shifting more youth into local or regional programs and providing more intensive services will likely result in an increase to State costs in the short run, with savings over the long term.
- The Legislature's initial investment will ultimately produce an opportunity to capture savings within TJJD's current budget for state operations.

# Flexibility in Probation Grant Programs

Decreasing complexity will allow probation departments to put state resources to thoughtful and effective use.

- The structure of State Aid Formula Funding is difficult for some probation departments to navigate, especially smaller departments with fewer youth.
- TJJD is developing plans to simplify State Aid Formula Funding to the extent possible.
- The agency's budget structure and appropriations riders could be modified to support greater flexibility and lessen administrative burdens on counties, with little or no impact to state costs.

Expenditure categories	Basic Probation Supervision	Community Programs	Pre & Post Adjudication	Commitment Diversion	Mental Health Services
Court Intake	✓	✓			
Direct Supervision	✓				
Youth Services	✓	✓		✓	
Mental Health Assessments	✓	✓	✓	✓	✓
Comm-Based Programs (Gen.)		✓		✓	
Comm-Based Programs (MH)		✓		✓	✓
Residential Programs & Services			✓	✓	✓
Post-Adjudication (NS)			✓	✓	
Post-Adjudication (S)			✓	✓	
Detention/Pre-Adjudication			✓		
Residential Mental Health Plcmnt			✓	✓	✓

# Unified Risk and Needs Assessment

A uniform assessment will improve our ability to compare outcomes and provide more consistent placement and treatment of young offenders

- TJJD is engaged in a multi-year effort to ensure every department has access to a validated tool.
- The State could provide financial support for a *unified* tool, including ongoing maintenance and training costs.
  - This would facilitate effective case planning and allow a more seamless movement of youth through the system.
  - Following a potential upfront investment, ongoing costs would likely fall between \$2 mil and \$3 mil per year.

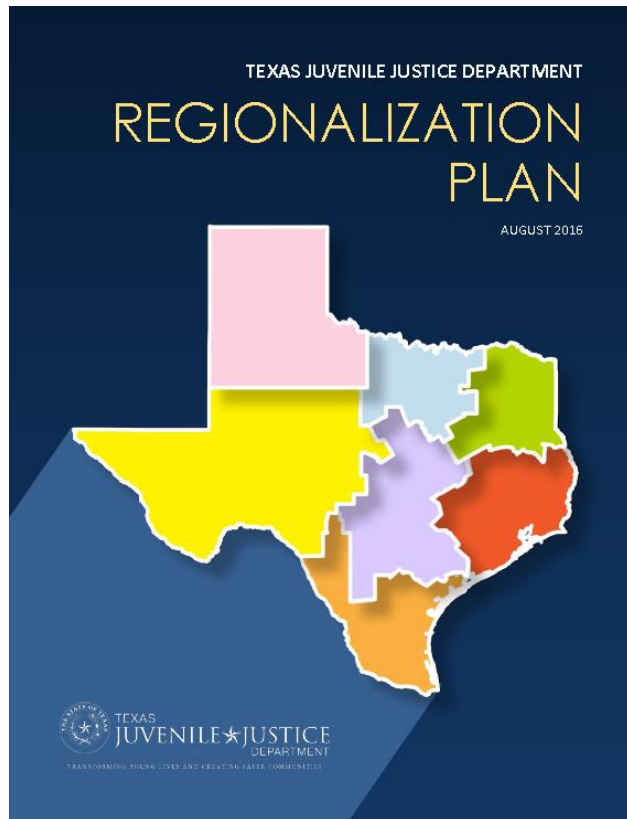
# Legislative Funding Methodologies

Taking all youth who contact the juvenile justice system into account when making funding decisions will better incentivize diversion from the system

- The current legislative method for setting appropriations in Strategy A.1.2 does not consider the approximately 6,800 youth per year that probation departments divert away from supervision.
  - This could incentivize placing youth on supervision even when doing so would not be appropriate based on the youth's risk level and needs.
- The Legislature could consider alternative approaches such as using all referrals rather than the number of youth under probation supervision as the base for making funding recommendations.
  - Such a change would have no immediate funding impact, but may eventually result in a change to appropriations.

# Maximizing the Impact of Regionalization

Additional flexibility and local control over regionalization funds may help to maximize the number of youth diverted from commitment



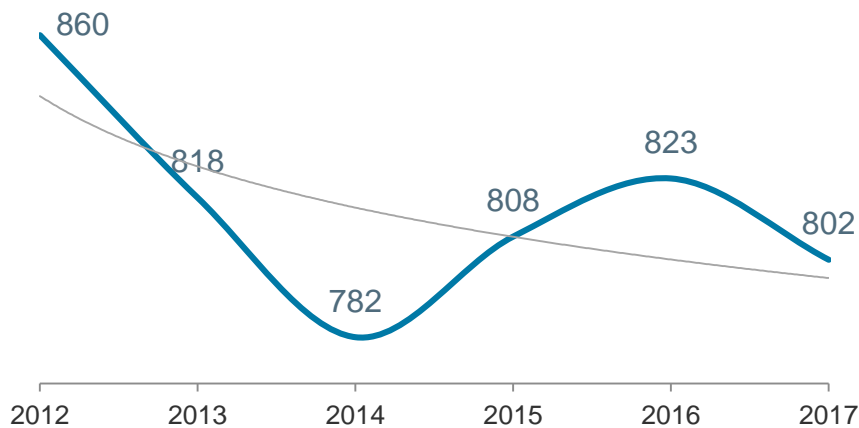
- The Regionalization program focuses on improving regional services and diverting individual youth from commitment to TJJD
- The program has effectively encouraged research-driven interventions, but the actual impact on commitments has been less than hoped
- TJJD is examining alternative designs to pair increased autonomy over the use of funds with enhanced accountability for youth commitments
- Legislative action to remove statutory language in favor of guidance in the General Appropriations Act would facilitate agency efforts

# Additional Information on our Agency and Population



# New Commitments

Commitments are down about 7% over five years and the seriousness of the crimes and need levels are much higher



between 2011 and so far in 2018

**200%**  
increase in  
aggravated  
robbery

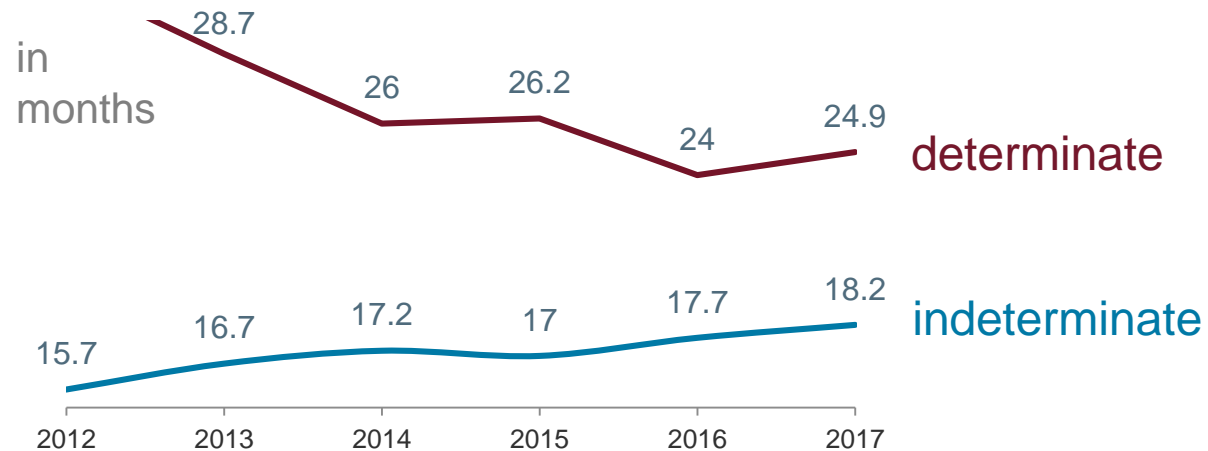
**60%**  
decrease in  
burglary



More than 60% of commitments are for second degree felony or above.

# Lengths of Stay

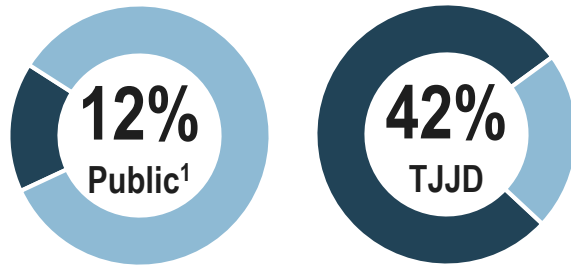
Since 2012 lengths of stay have gone up for indeterminate commitments and down for determinate sentences



# Adverse Childhood Experiences (ACEs)

TJJD youth are 3.5x more likely than the public to have 4 or more ACEs.

People with 4 or more ACEs



TJJD Prevalence		
ACEs	%	#
0	6%	100
1	16%	264
2	17%	293
3	18%	311
4	13%	226
5	13%	219
6	8%	139
7	5%	85
8	2%	37
9	1%	9

## TJJD Prevalence by Factor

ACEs Factor	%	#
Emotional Abuse	25.1%	422
Physical Abuse	29.2%	492
Sexual Abuse	14.8%	249
Emotional Neglect	15.0%	253
Physical Neglect	20.3%	341
Family Violence	43.9%	739
Household Substance Abuse	41.8%	703
Household Mental Illness	8.4%	142
Parents Separated or Divorced	70.2%	1181
Incarcerated Household Member	63.3%	1066

Childhood experiences have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity. ACEs have been linked to risky health behaviors, chronic health conditions, low life potential, and early death <sup>1</sup>.

Estimates for TJJD are likely low. Youth may not disclose all aspects of their trauma background, especially sexual abuse, at intake.

# Major Rule Violations

A small percentage of youth commit the majority of the major rule violations—meaning violations that break state laws

youth in secure facilities

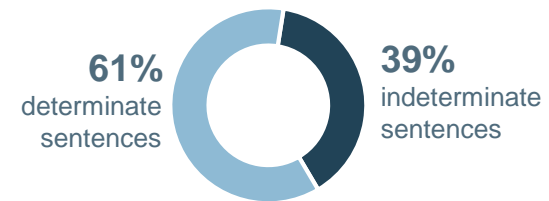
**20%**

of youth commit **62%**  
of major rule violations



**20%**

of youth have no major  
rule violation



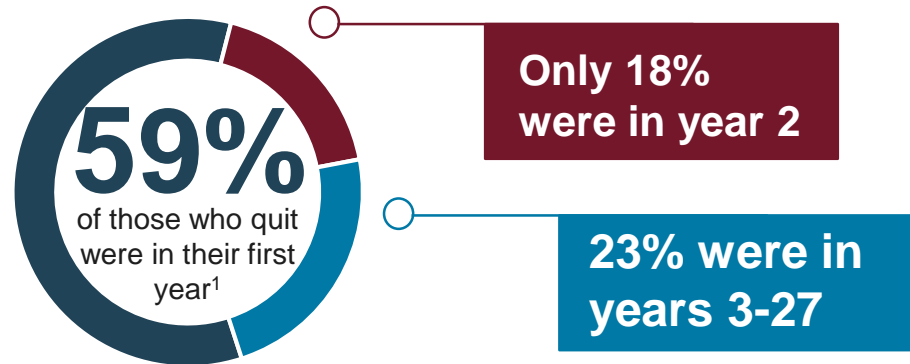
18%	simple assault	1%
14%	aggravated robbery	52%
14%	female	8.4%

# Juvenile Correctional Officers

JCO levels are too low and bring high risk to safety and security

**378**

JCOs  
voluntarily left  
the 5 facilities  
in fy 2017



JCO Turnover	
2018	51.00%*
2017	41.19%
2016	37.17%
2015	31.91%
2014	36.52%
2013	37.94%



# Juvenile Correctional Officers

JCO levels are too low and bring high risk to safety and security

on any given day...

1196 JCO positions

1036 Filled JCO positions

694 JCOs available



# Cost of JCO Turnover

Turnover among JCOs not only brings risk, it has a high financial cost

**\$6,895**

total estimated new hire  
training cost per JCO

Approximately

**\$1.5m**

spent to train new hires who  
left before their first anniversary

**\$6**

**million**

paid in overtime in an attempt  
to maintain minimum staffing

# Low Juvenile Correctional Officer Levels

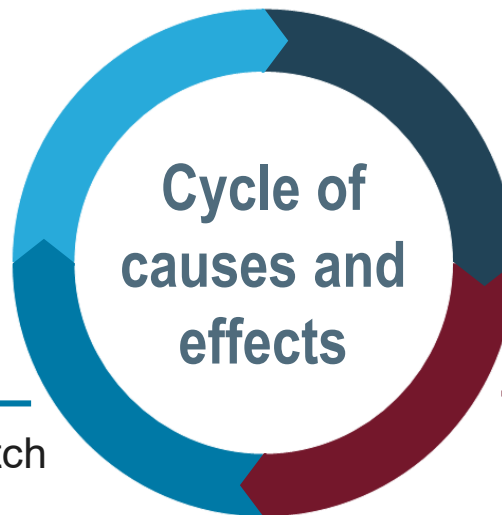
There is a cycle of causes and effects that contribute to the high level of attrition as well as low level of staff available for duty

## Safety & security

- Not feeling safe at work
- Anxiety about JCO arrests
- Difficult to control youth
- Assaults by youth
- False allegations by youth leading to non-contact status and investigations

## Training & development

- Initial training that doesn't match on-dorm practices
- Limited continuing education
- Training not reinforced through continuing support
- Inadequate acknowledgement for good work



## Work-life balance

- Unpredictable schedules
- Too many hours
- Not enough approved vacation or days off

## Work environment

- Too much paperwork
- Lack of consistent team spirit
- Inconsistency in assignments
- Job objectives unclear



# Recidivism

Rates show improvement from 2012 to 2016

Released from...	Recidivism Type	FY 2012	Most Recent <sup>2</sup>
TJJD Secure Facilities	1-year re-arrest	43.6%	41.1%
	3-year re-arrest	76.8%	73.8%
	1-year re-arrest (violent)	10.8%	9.7%
	3-year re-arrest (violent)	25.9%	26.2%
	1-year re-incarceration	23.4%	23.4%
	3-year re-incarceration	44.3%	41.8%
County Post-Adjudication Secure/Non-Secure Facilities	1-year re-referral (from secure)	47.8%	44.0%
	3-year re-referral (from secure)	78.1%	70.3%
	1-year re-referral (from non-secure)	44.0%	39.4%
	3-year re-referral (from non-secure)	72.9%	67.8%

# Additional information on funding

# Probation Appropriations Strategies

\$318.0 mil for FY18-19

- Dollar amounts in Strategies A.1.1 through A.1.8 are entirely devoted to grants to local probation departments (\$312.5 million for the biennium)
- Strategy A.1.9 contains the core administrative and technical assistance team

## A. Goal: COMMUNITY JUVENILE JUSTICE

**A.1.1. Strategy:** PREVENTION AND INTERVENTION

\$ 3,012,177 \$ 3,012,177

**A.1.2. Strategy:** BASIC PROBATION SUPERVISION

\$ 35,778,526 \$ 35,915,398

**A.1.3. Strategy:** COMMUNITY PROGRAMS

\$ 44,900,650 \$ 44,900,650

**A.1.4. Strategy:** PRE & POST ADJUDICATION FACILITIES

\$ 24,782,157 \$ 24,782,157

**Pre and Post Adjudication Facilities.**

**A.1.5. Strategy:** COMMITMENT DIVERSION INITIATIVES

\$ 19,492,500 \$ 19,492,500

**A.1.6. Strategy:** JUV JUSTICE ALTERNATIVE ED PROGRAMS

\$ 6,250,000 \$ 6,250,000

**Juvenile Justice Alternative Education Programs.**

**A.1.7. Strategy:** MENTAL HEALTH SERVICES GRANTS

\$ 12,804,748 \$ 12,804,748

**A.1.8. Strategy:** REGIONAL DIVERSION ALTERNATIVES

\$ 9,139,405 \$ 9,139,405

**A.1.9. Strategy:** PROBATION SYSTEM SUPPORT

\$ 2,758,113 \$ 2,758,112

**Total, Goal A: COMMUNITY JUVENILE JUSTICE**

\$ 158,918,276 \$ 159,055,147

# Probation Appropriations Strategies

\$318.0 mil for FY18-19

With these funds, TJJD...

- Provides state grants to local probation departments (about 25% of total probation funds statewide; remainder is from local sources);
- Administers all grant programs and provide technical assistance; and
- Coordinates regional planning and evaluates, approves, and monitors regional youth diversions

## A. Goal: COMMUNITY JUVENILE JUSTICE

<b>A.1.1. Strategy:</b> PREVENTION AND INTERVENTION	\$	3,012,177	\$	3,012,177
<b>A.1.2. Strategy:</b> BASIC PROBATION SUPERVISION	\$	35,778,526	\$	35,915,398
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<b>A.1.6. Strategy:</b> JUV JUSTICE ALTERNATIVE ED PROGRAMS	\$	6,250,000	\$	6,250,000
Juvenile Justice Alternative Education Programs.				
<b>A.1.7. Strategy:</b> MENTAL HEALTH SERVICES GRANTS	\$	12,804,748	\$	12,804,748
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<b>A.1.9. Strategy:</b> PROBATION SYSTEM SUPPORT	\$	2,758,113	\$	2,758,112
<b>Total, Goal A:</b> COMMUNITY JUVENILE JUSTICE	\$	158,918,276	\$	159,055,147

# Setting Appropriations Levels

## Strategy A.1.2, Basic Probation Supervision

Historically, Strategy A.1.2, Basic Probation Supervision, has been funded using a formula calculation:

*projected supervision population*

*x a cost per youth day*

*x 365*

*= appropriations*

### A. Goal: COMMUNITY JUVENILE JUSTICE

<b>A.1.1. Strategy:</b> PREVENTION AND INTERVENTION	\$	3,012,177	\$	3,012,177
<b>A.1.2. Strategy:</b> BASIC PROBATION SUPERVISION	\$	35,778,526	\$	35,915,398
<b>A.1.3. Strategy:</b> COMMUNITY PROGRAMS	\$	44,900,650	\$	44,900,650
<b>A.1.4. Strategy:</b> PRE & POST ADJUDICATION FACILITIES	\$	24,782,157	\$	24,782,157
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<b>Total, Goal A:</b> COMMUNITY JUVENILE JUSTICE	\$	158,918,276	\$	159,055,147

# Setting Appropriations Levels

## Strategy A.1.2, Basic Probation Supervision

FY 2018 Example:

Projected population on supervision	20,128
Appropriated cost per day	\$4.87
Days in year	365
<hr/>	
<b>A.1.2 Appropriation</b>	<b>\$35,778,526</b>

**A. Goal:** COMMUNITY JUVENILE JUSTICE

**A.1.1. Strategy:** PREVENTION AND INTERVENTION

**A.1.2. Strategy:** BASIC PROBATION SUPERVISION

**A.1.3. Strategy:** COMMUNITY PROGRAMS

**A.1.4. Strategy:** PRE & POST ADJUDICATION

\$	3,012,177	\$	3,012,177
\$	35,778,526	\$	35,915,398
\$	44,900,650	\$	44,900,650

Appropriations in remaining grant strategies  
are set using non-formula based methods.

# FY18-19 Appropriations Drivers

## Probation Strategies

Probation appropriations for the current biennium saw a:

- Net decrease to certain strategies due to mandated baseline reductions and/or changes in projected populations; and a
- Partially offsetting increase to Regional Diversion Alternatives program to keep 2017 funding level

### **A. Goal:** COMMUNITY JUVENILE JUSTICE

<b>A.1.1. Strategy:</b> PREVENTION AND INTERVENTION	\$	3,012,177	\$	3,012,177
<b>A.1.2. Strategy:</b> BASIC PROBATION SUPERVISION	\$	35,778,526	\$	35,915,398
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<b>Total, Goal A:</b> COMMUNITY JUVENILE JUSTICE	\$	<u>158,918,276</u>	\$	<u>159,055,147</u>



## LEGISLATIVE BUDGET BOARD

# Department of Public Safety Crime Labs

**PRESENTED TO HOUSE APPROPRIATIONS SUBCOMMITTEE, ARTICLES I, IV, V  
LEGISLATIVE BUDGET BOARD STAFF**

**APRIL 2018**



# Statement of Interim Charge

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Study the state crime lab operational structure and recommend strategies to increase efficiency, including the possibility of establishing a fee for certain services to minimize duplication and encourage timely processing.

# Overview of the State Crime Lab Program

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- The Department of Public Safety (DPS) operates 13 crime labs across the state that provide forensic analysis to Texas law enforcement agencies.
- The labs' employees assist peace officers with crime scene investigations, analyze physical evidence in criminal cases, present results of analyses in courtroom testimony, and provide instruction at peace officer training seminars.

# DPS Crime Lab Cases Requested

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The number of forensic evidence requests from law enforcement entities submitted to DPS increased 21 percent over the last two biennia:

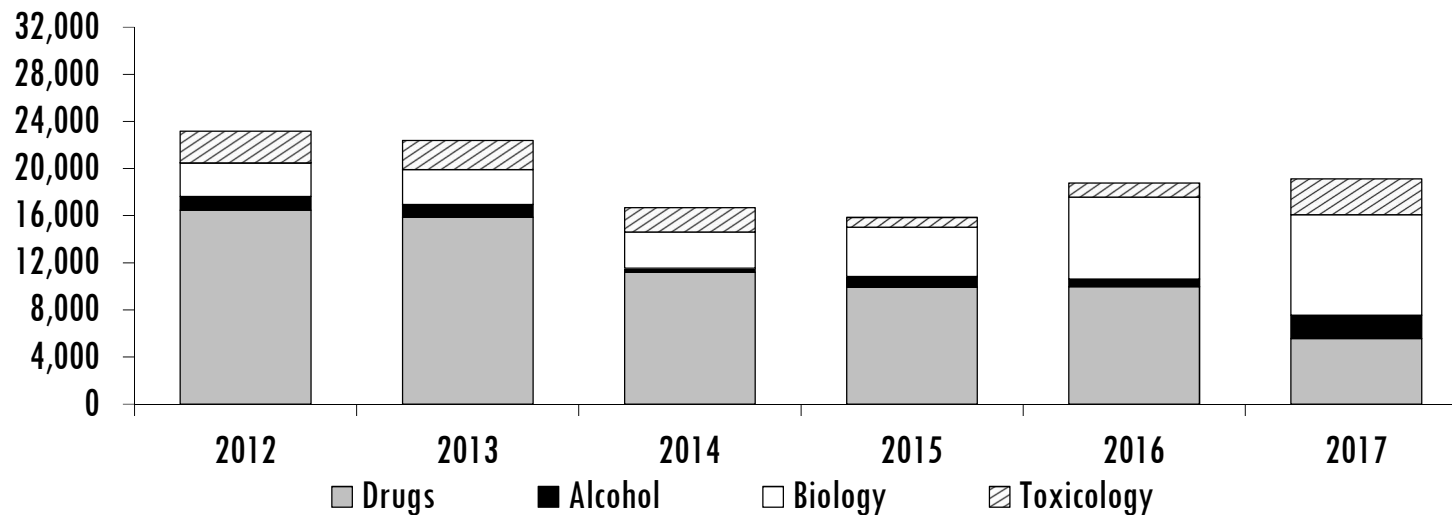
- FY 2014 – 88,623 from 1,427 entities
- FY 2015 – 93,364 from 1,437 entities
- FY 2016 – 103,401 from 1,434 entities
- FY 2017 – 107,143 from 1,475 entities

The entities that submit the most forensic evidence requests to DPS are:

- Corpus Christi Police Department
- Lubbock Police Department
- Montgomery County Sherriff's Office
- Plano Police Department
- Midland Police Department

# DPS Crime Lab Backlog

- DPS uses the following timeframes to determine backlogged cases by discipline:
  - More than 30 days – Drugs and Alcohol;
  - More than 60 days –Firearm, Trace/Criminalistics, Latent, Toxicology, QD, AFIS, GSR, and Digital Imaging; and
  - More than 90 days – Biology and DNA (Forensic Biology)
- DPS Crime Laboratory Backlogged Cases, Fiscal Years 2012 to 2017:



# 2017 LBB Staff Report

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## **Modify State Crime Lab Case Management Practices to Optimize Workload**

### Findings:

- DPS' crime labs did not have formal procedures to ensure all forensic testing was necessary at the time testing occurred and that no policy existed to allow labs to halt testing determined to be unnecessary.
- Unnecessary testing may occur if circumstances in the criminal case have changed and DPS is not notified, or if a local jurisdiction requests all evidence be tested even though it would not affect the level of the offense charged.
- Resources used for unnecessary testing could have been used to address backlogs.

# Actions by 85<sup>th</sup> Legislature: Crime Lab Cost Containment

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The 85<sup>th</sup> Legislature adopted **DPS Rider 57, Crime Lab Cost Containment** in the 2018-19 GAA.

Rider 57 requires that DPS track the efficiency and output of crime lab services and develop cost containment measures to include:

- 1) maintaining communication with agencies requesting forensic evidence testing on the status of cases before forensic testing occurs; and
- 2) **stopping work** on a forensic test in accordance with applicable accreditation standards for instances in which a crime lab has begun testing that is determined to be unnecessary.

# Actions of the 85<sup>th</sup> Legislature: Forensic Analysis Fee Revenue

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The 85<sup>th</sup> Legislature also increased appropriations from forensic analysis fees, a portion of which offset a decrease in General Revenue, and added **DPS Rider 58, Revenue Collected from Forensic Analysis of Physical Evidence Fees Applied to Law Enforcement Agencies**, which directs the use of fee revenues collected, pursuant to existing authority granted in Code of Criminal Procedure, Section 38.35.

Rider 58:

- authorizes use of funds to inform law enforcement agencies of the policy to charge forensic analysis fees;
- limits use of fee revenues to only the cost of conducting forensic analysis;
- requires a report on fees collected and forensic analysis data by November 1 each fiscal year; and
- authorizes expenditure of fees collected in excess of estimated amounts

# Actions of the 85<sup>th</sup> Legislature:

## Crime Lab Services Appropriations

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**2018-19 All Funds appropriation for Crime Lab Services is \$76.1 million, an increase of \$1.6 million as compared to 2016-17 expenditures.**

**Appropriations assumed \$11.5 million in forensic analysis fees, based on historical trends of applicable cases and prevailing fee rates. General Revenue appropriations were reduced by half this amount -- \$5.8 million.**

### **Other funding changes:**

- **Sexual Assault Kit (SAK) testing.** GR also decreased \$3.8 million due to \$8.0 million in one-time expenditures for SAK backlog testing (for kits submitted prior to FY2012) in the 16-17 biennium, partially offset by \$4.2 million in new funds for SAK backlog testing (for kits submitted during/after FY2012).
- **Statewide electronic tracking for evidence of a sex offense.** GR increased by \$1.6 million due to enactment of HB 281, to implement this system.
- **Federal/Other Funds.** DPS also estimated \$4.8 million in Federal Funds and \$1.3 million in Other Funds related to various Interagency Contracts for crime labs, a net increase of \$1.5 million over the 16-17 biennium.



# **Actions Taken After the 85<sup>th</sup> Legislature: Forensic Analysis Fees**

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- On July 20, 2017 DPS notified local entities of the Rider 58 requirement to collect forensic analysis fees and provided a fee schedule as well as information about a voucher system it intended to implement.
- On July 28, 2017, Governor Abbott requested that DPS retract the notification letter and cease the implementation of forensic analysis fee collection.
- DPS agreed to assess and collect no forensic analysis fees in the 2018-19 biennium.
- The result is a \$5.8 million General Revenue decrease to Crime Lab Services which will not be supplanted by forensic analysis fee collections (Appropriated Receipts) in the 2018-19 biennium.



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# MODIFY STATE CRIME LAB CASE MANAGEMENT PRACTICES TO OPTIMIZE WORKLOAD

The Texas Department of Public Safety operates crime laboratories at 13 locations across the state. These crime labs provide forensic evidence testing at no charge to all Texas law enforcement agencies. Throughout the past several years, the department's crime labs have experienced an increase in the number of forensic testing requests and backlogs. According to the Department of Public Safety, from calendar years 2010 to 2015, the crime lab's forensic evidence backlog increased from approximately 22,000 to more than 33,000 submissions. Among respondents to a 2016 survey conducted by the Texas Center for the Judiciary, 96.2 percent indicated that the wait for lab results had led to court delays.

The Department of Public Safety's crime labs do not have standard procedures to ensure all forensic testing is necessary at the time testing occurs. There is also not a policy that allows the lab to halt testing determined to be unnecessary. As a result, unnecessary testing may occur, reducing resources that could be used to address backlogs. Implementing a process to systematically check the need for testing in certain circumstances could reduce crime lab workloads and enable them to operate more efficiently.

## FACTS AND FINDINGS

- ◆ In one instance, a Department of Public Safety crime lab was able to reduce its backlog by 66.0 percent by communicating with district attorneys to determine whether testing was still required for backlogged cases.
- ◆ The American Society of Crime Laboratory Directors/Laboratory Accreditation Board, which accredits crime laboratories in the U. S., authorizes a crime lab to stop testing that has begun on a forensic evidence submission if the lab develops and adheres to its own policy.

## CONCERNS

- ◆ The Department of Public Safety does not have a formal process to ensure all forensic testing remains necessary at the time of testing. The agency attempts to reduce redundant or unnecessary testing by contacting the requesting agency. However, the Department of Public Safety will perform the testing if the submitting agency continues the request, which limits the crime

lab's ability to efficiently prioritize cases at the time testing actually occurs. This continuation can result in tests being conducted unnecessarily.

- ◆ The Department of Public Safety crime labs complete all testing that has been started and do not have a policy to halt testing for certain situations, such as the requesting agency notifying the lab that testing is no longer necessary.

## OPTION

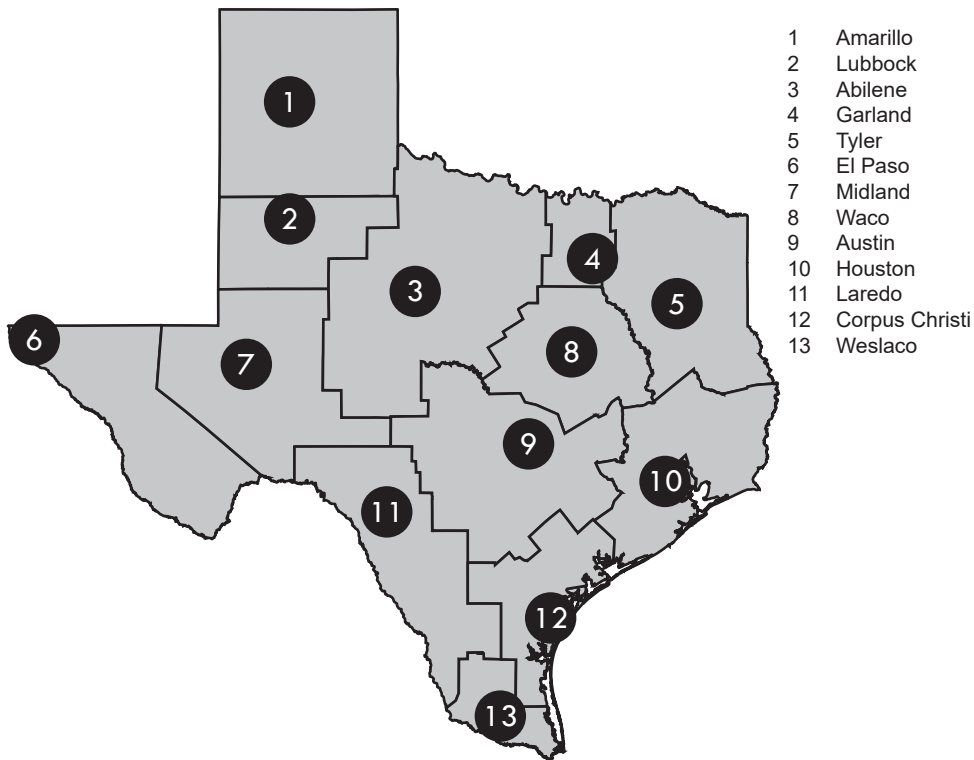
- ◆ **Option 1:** Include a rider in the 2018–19 General Appropriations Bill to require the Department of Public Safety to implement cost containment measures that include: (1) maintaining communication with agencies requesting forensic evidence testing on the status of cases before forensic testing occurs; and (2) stopping work on a forensic test in accordance with applicable accreditation standards for instances in which a crime lab has begun testing that is determined to be unnecessary.

## DISCUSSION

According to the Texas Forensic Science Commission, forensic analysis is the expert examination of physical evidence collected during a criminal investigation to determine the connection between evidence and a criminal action. Forensic analysis helps investigators learn the composition and source of evidence, such as drugs and trace materials, or determine the identity of suspects, and may be presented in court. Accurate and timely forensic testing results can prove a crime has been committed, determine whether a suspect had contact with a victim or crime scene, establish the identity of persons associated with a crime, prove innocence, corroborate a victim's testimony, and assist in establishing facts.

The Law Enforcement Support Division of the Department of Public Safety (DPS) provides forensic analysis to Texas law enforcement agencies. DPS has 13 crime labs across the state, shown in **Figure 1**. The DPS crime labs have approximately 426 full-time equivalents. The labs' employees assist peace officers with crime scene investigations, provide instruction at peace officer training

**FIGURE 1**  
**DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY LOCATIONS, AS OF FISCAL YEAR 2016**



NOTE: Regions may vary slightly based on forensic testing discipline to help distribute workload and based on lab capabilities.  
 SOURCE: Texas Department of Public Safety.

seminars, analyze physical evidence in criminal cases, and present results of analyses in courtroom testimony.

Each crime lab serves a separate region of the state. DPS establishes service areas with the goal of each lab having a similar workload. Each lab conducts various forensic evidence disciplines based on the characteristics of the lab. **Figure 2** shows the services provided at each regional lab.

DPS crime labs have been continuously accredited since 1986 through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Accreditation is part of a lab's quality assurance program, which includes proficiency testing, continuing education, customer liaison, and other programs to help the lab provide more effective overall service.

**Figure 3** shows appropriations for DPS crime labs and actual expenditures for the last three biennia. The Eighty-third Legislature, Regular Session, 2013, appropriated \$8.7 million in General Revenue Funds to increase the general capacity of the crime laboratories and \$10.9 million in General Revenue Funds to provide additional testing services

to eliminate the backlog of sexual assault kits (SAK). These appropriations resulted in an increase for the 2014–15 biennium. The Eighty-fourth Legislature, 2015, appropriated \$5.0 million in General Revenue Funds to complete testing services necessary to eliminate the backlog of sexual assault kits during the 2016–17 biennium. DPS crime labs expended an average of \$4.2 million more than the appropriated amount from the 2010–11 to 2014–15 biennia. According to DPS, amounts expended in addition to what was appropriated are attributed to Interagency Contracts and Federal Funds.

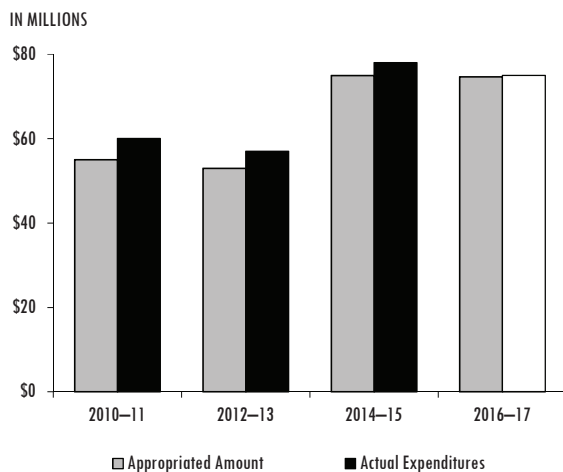
Approximately 80.0 percent of appropriations for the DPS crime labs for the 2016–17 biennium are from General Revenue Funds, as shown in **Figure 4**. The remainder consists of Federal Funds, Interagency Contracts, and Appropriated Receipts. According to DPS, Appropriated Receipts are from fees collected by local jurisdictions for restitution paid by defendants for drug or blood alcohol cases when a defendant is placed on probation.

**FIGURE 2**  
**SERVICES BY CRIME LABORATORY, AS OF FISCAL YEAR 2016**

LOCATION	DRUGS	ALCOHOL	BIOLOGY	DNA	FIREARM	TRACE	LATENT	TOXICOLOGY	QD	AFIS	GSR	DIGITAL EVIDENCE
Abilene	X	X										
Amarillo	X											
Austin	X	X	X	X	X	X	X	X	X	X	X	X
Corpus Christi	X	X	X	X								
El Paso	X	X	X	X	X							
Garland	X	X	X	X	X	X	X					
Houston	X	X	X	X	X	X						
Laredo	X											
Lubbock	X	X	X	X	X	X						
Midland	X	X										
Tyler	X	X	X		X							
Waco	X	X	X	X								

NOTE: QD = Questioned Documents; AFIS = Automated Fingerprint Identification System; GSR = Gunshot Residue.  
SOURCE: Texas Department of Public Safety.

**FIGURE 3**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LAB**  
**APPROPRIATIONS AND EXPENDITURES**  
**2010–11 TO 2016–17 BIENNIA**



NOTE: The expenditures for part of fiscal year 2016 and all of 2017 are estimated.

SOURCES: Legislative Budget Board; Eighty-first Legislature, General Appropriations Act (GAA), 2010–11 Biennium; Eighty-second Legislature, GAA, 2012–13 Biennium; Eighty-third Legislature, GAA, 2014–15 Biennium; Eighty-fourth Legislature, GAA, 2016–17 Biennium; Automated Budget and Evaluation System of Texas (ABEST).

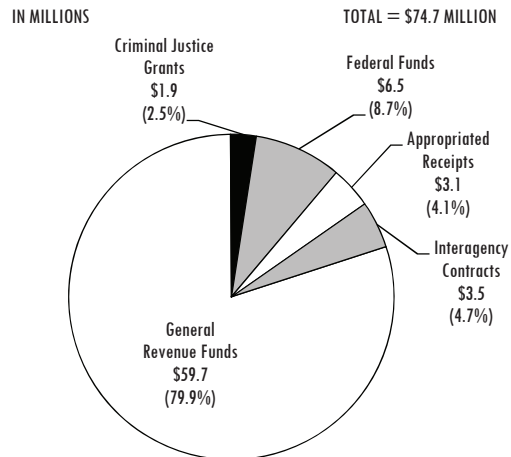
#### DPS CRIME LAB FORENSIC WORKFLOW

Each forensic testing discipline provided by the crime labs is conducted using different processes. Four testing disciplines make up more than 85.0 percent of all testing requests sent to DPS labs: Drugs, Blood Alcohol, Biology, and DNA. DNA evidence is closely linked with the most serious crimes, and testing of drugs is the lab's most requested service.

DPS crime labs processed 4,368 DNA samples in fiscal year 2015 with an average turnaround time of 150 days from receipt of evidence to reporting results. The first step in DNA testing is a biological screening process in which presumptive tests to identify certain fluids are conducted and DNA samples are selected. DNA samples are then frozen until a DNA analyst begins working on the case. The standard process is to accumulate a batch of cases then compile and interpret results before the administrative review of the completed case. When DNA test results are obtained, they are entered into the Combined DNA Index System (CODIS), the national database for criminal justice DNA samples. **Figure 5** shows the DPS crime lab workflow for the testing of DNA evidence.

DPS crime labs conducted 44,965 drug evidence tests in fiscal year 2015 with an average turnaround time of 123 days. Drugs are first screened to confirm drug type and then placed in an instrument that identifies the makeup of the substance. According to crime lab staff, standard practice is to test the substance up to the highest penalty group. For

**FIGURE 4**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME**  
**LABORATORY APPROPRIATIONS BY METHOD OF**  
**FINANCE, 2016–17 BIENNIUM**



**NOTES:**

- (1) Criminal Justice Grants include state and Federal Funds administered through Interagency Contracts with the Trusteed Programs within the Office of the Governor, Criminal Justice Division.
- (2) Appropriated Receipts include fees collected by local jurisdictions for restitution from certain drug or blood alcohol cases.

SOURCE: Legislative Budget Board, Fiscal Size Up, 2016–17 Biennium.

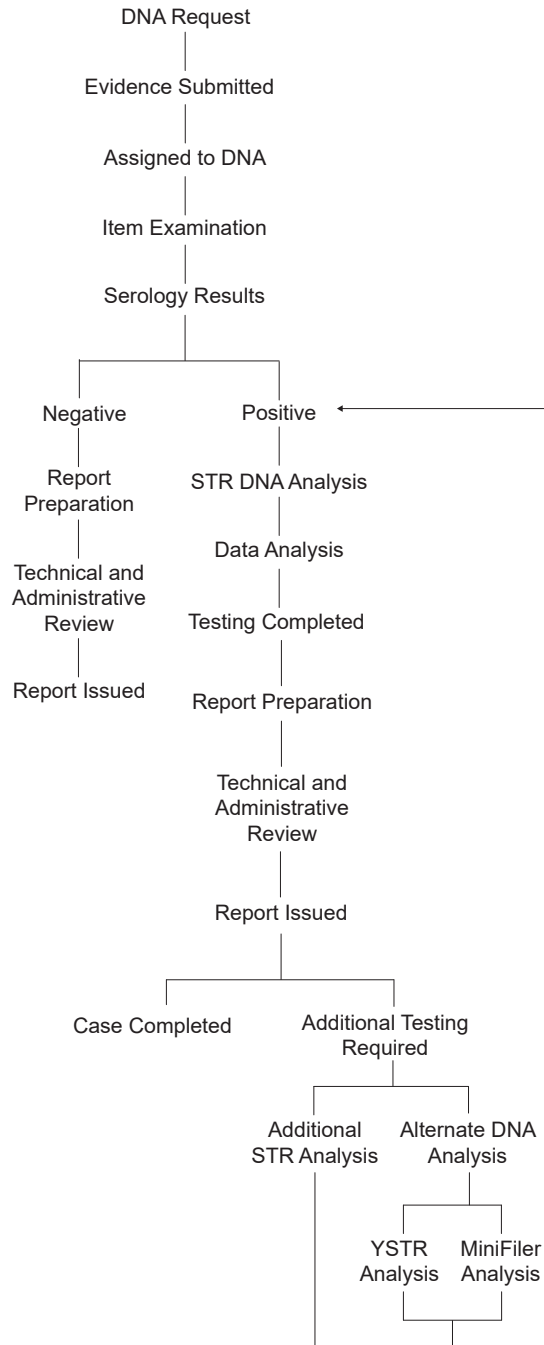
example, if multiple drugs were found in one sample, the lab would test the drug included in the highest penalty group. The drug discipline work flow is shown in **Figure 6**.

**DPS CRIME LAB CAPACITY AND BACKLOGS**

DPS reports that it is unable to determine the total capacity of its crime labs because a number of variables affect the length of time required to complete a case. According to the Dallas County crime lab, although management has a general idea of its lab capacity, a variety of factors make it difficult to set a benchmark for the number of cases a crime lab should complete. For example, a DNA case may have many samples of evidence requiring analysis.

When a law enforcement agency requests a test, all evidence received by the DPS crime lab is assigned a case number and tracked via the agency's laboratory information management system (LIMS). DPS calculates case turnaround times from the date a request is received to release of the results to the requesting agency. **Figure 7** shows average turnaround times by testing discipline for calendar years 2013 to 2015. From calendar years 2013 to 2015, completion times for Biology

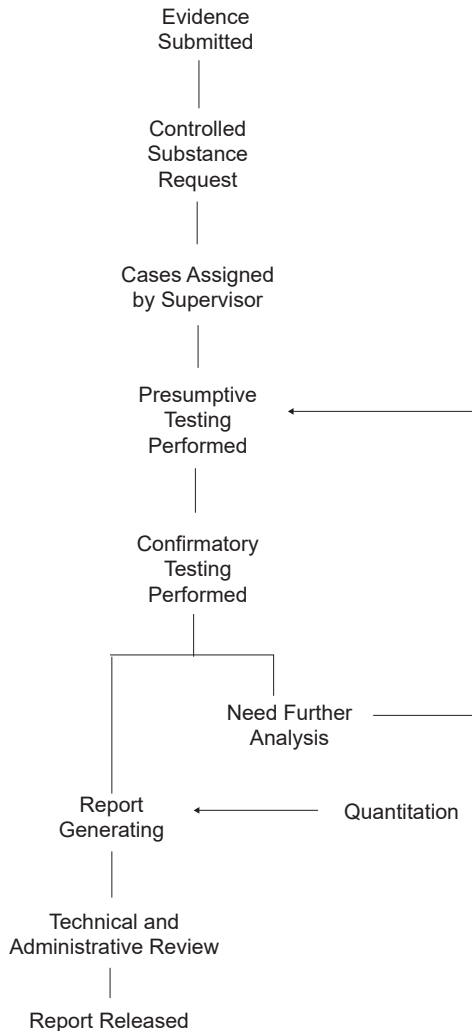
**FIGURE 5**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME**  
**LABORATORY DNA TESTING PROCESS**  
**AS OF FISCAL YEAR 2016**



NOTE: STR = Short Tandem Repeat: A method to compare two or more DNA samples; YSTR = Y-Chromosome Short Tandem Repeat; MiniFiler = A kit used for DNA amplification.

SOURCE: Texas Department of Public Safety.

**FIGURE 6**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME**  
**LABORATORY DRUG TESTING PROCESS**  
**AS OF FISCAL YEAR 2016**



SOURCE: Texas Department of Public Safety.

and DNA disciplines testing increased by 24 days and 39 days, respectively. Conversely, completion time for the Drugs discipline decreased by 50 days, and Blood Alcohol testing decreased by 11 days since calendar year 2013.

According to the U.S. Department of Justice's National Institute of Justice (NIJ), no industrywide definition determines a backlog of forensic DNA testing. For grant purposes, the NIJ defines a forensic biology or DNA case as backlogged if the case has not been completed within 30 days of receipt by the lab. NIJ reports some crime laboratories consider a case to be backlogged if DNA has not been analyzed after 90 days. Other crime labs, including the Texas

**FIGURE 7**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME**  
**LABORATORY AVERAGE DAYS FROM TESTING REQUEST**  
**TO COMPLETION, CALENDAR YEARS 2013 TO 2015**

DISCIPLINE	2013	2014	2015
Drugs	173	162	123
Alcohol	48	47	37
Biology	139	184	163
DNA	111	131	150
Firearm	135	100	129
Trace	248	349	340
Latent	111	120	86
Toxicology (2)	177	177	141
QD (1) (2)	147	147	145
AFIS (1) (2)	42	98	139
GSR (1) (2)	432	215	235

**NOTES:**

(1) QD = Questioned Documents, AFIS = Automated Fingerprint Identification System, GSR = Gunshot Residue.

(2) Toxicology, QD, AFIS, and GSR disciplines are provided only at the Austin laboratory location. Information for the Digital Evidence discipline was not provided.

SOURCE: Texas Department of Public Safety.

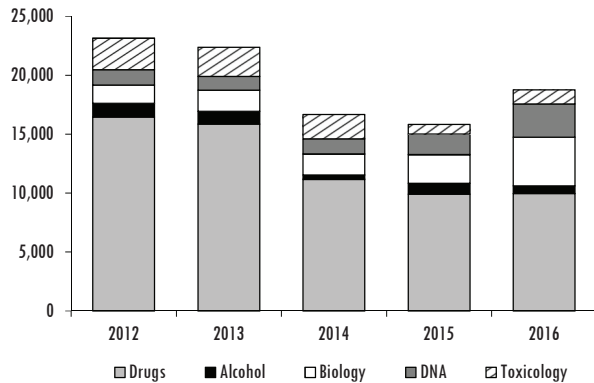
Parks and Wildlife Department's forensic lab, consider any case, no matter when it was received, to be backlogged if it has not been analyzed. DPS considers a case to be backlogged if it has not been analyzed and a completed report has not been submitted to the requesting agency within a certain number of days specific to each discipline. The DPS timeframes of backlogged cases by discipline are as follows:

- more than 30 days – Drugs and Alcohol;
- more than 60 days – Firearm, Trace/Criminalistics, Latent, Toxicology, QD, AFIS, GSR, and Digital Imaging; and
- more than 90 days – Biology and DNA.

The testing disciplines that make up the majority of the DPS backlog are Drugs, Blood Alcohol, Biology, DNA, and Toxicology. These disciplines represent 93.5 percent of DPS crime labs' forensic testing backlog. **Figure 8** shows the number of cases backlogged in these five disciplines at the end of calendar years 2012 to 2015, and as of August 22, 2016. Beginning in fiscal year 2014 appropriations to the DPS crime labs were increased to augment general capacity and address backlogs of sexual assault kits. The backlog was reduced in 2014–15 biennium when appropriations were increased by almost \$20.0 million. However, the backlog has grown in fiscal year 2016.



**FIGURE 8**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME**  
**LABORATORY BACKLOGGED CASES**  
**CALENDAR YEARS 2012 TO 2016**



NOTE: Calendar years 2012 to 2015 show the number of backlogged cases as of December 31. Calendar year 2016 shows the number of backlogged cases as of August 22, 2016.  
 SOURCE: Texas Department of Public Safety.

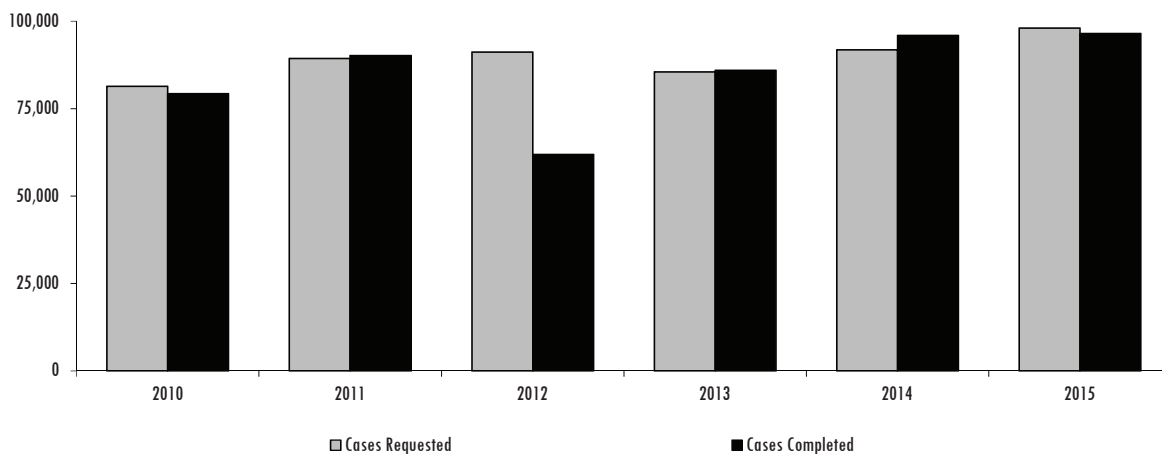
From calendar years 2010 to 2015, the number of forensic evidence requests submitted to DPS increased 20.5 percent, from approximately 81,000 to 98,000. **Figure 9** shows forensic testing requests and completions for calendar years 2010 to 2015. A test may not be completed for a variety of reasons. In addition to backlogged cases, factors such as a plea agreement being reached or a determination that forensic testing of certain evidence is not necessary may result in a case being incomplete. DPS does not track the reasons for which a test is incomplete.

#### RECENT LEGISLATION AFFECTING WORKLOADS AT DPS CRIME LABS

Since 2011, new statutory requirements for forensic evidence testing have contributed to the number of submissions to DPS crime labs. Senate Bill 1636, Eighty-second Legislature, Regular Session, 2011, required law enforcement agencies to analyze or submit to an accredited crime laboratory all sexual assault evidence from active criminal cases occurring since September 1, 1996, that had not previously been analyzed or submitted for analysis. The bill also required DPS, to the extent funding was available, to analyze or contract for the analysis of all applicable sexual assault evidence submitted to the agency by September 1, 2014. In February 2013, DPS estimated approximately 20,000 sexual assault kits (SAKs) throughout the state were unanalyzed. Initially, DPS estimated that 10,000 of the unanalyzed SAKs would be submitted to the agency for processing, and that law enforcement entities would use their own or private crime labs to process the remaining 10,000 kits. DPS planned to process the SAKs received by outsourcing them to other accredited labs on a fee for service basis. DPS has received more than 18,000 unanalyzed SAKs, and the agency anticipated that testing would be complete during fiscal year 2016. As of June 30, 2016, 10,145 SAKs in DPS' possession were expected to be outsourced.

Senate Bill 1292, Eighty-third Legislature, Regular Session, 2013, amended statute to require that all biological evidence collected by the state as part of a capital offense investigation be tested. The bill further required that the lab performing

**FIGURE 9**  
**TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY CASES REQUESTED AND CASES COMPLETED**  
**CALENDAR YEARS 2010 TO 2015**



SOURCE: Texas Department of Public Safety.



the test pay for it. DPS reports that this requirement has significantly increased the number of DNA samples tested, in some instances totaling 30 to 100 samples per case.

According to DPS, it can be difficult to isolate a particular drug in evidence submitted for testing. The chemical structure of drugs may be altered, which makes it difficult to match the drug to a standard. DPS reports that Senate Bill 172, Eighty-fourth Legislature, 2015, has assisted in addressing this issue. The bill added certain drugs that are similar to one another, but have a slightly different makeup and properties, to the Texas Controlled Substances Act for criminal prosecution and other purposes. As a result, costs to test drugs has decreased due to not having to purchase standards to test drugs against for each chemical structure.

#### **DPS CRIME LABS INTERACTION WITH LOCAL CRIMINAL JUSTICE SYSTEMS**

Many local law enforcement agencies use the DPS crime labs for forensic testing services. These agencies range in size and geographic location. In addition, criminal justice practices can vary greatly among jurisdictions. For example, some prosecutor offices may require more pieces of evidence to be tested per case than others would request for a similar case. These circumstances require the crime labs' workload be efficiently managed to ensure only necessary forensic testing be performed so turnaround times are suitable for all local agencies. Communication with the requesting law enforcement agency is necessary to manage expectations and to ensure that all evidence testing is still necessary at the time testing occurs.

In calendar years 2013 and 2014, DPS received an average of 87,642 testing requests each year from 2,310 law enforcement agencies. Approximately 22,000 of all testing requests in these years were from 25 users of the DPS crime lab, and the Lubbock Police Department (LPD) requested more testing from the DPS lab than any other agency. DPS reports that the criminal justice system requires a quicker response for many cases than the DPS crime lab can provide. LPD reports that it has had concerns with the timeliness of DNA and trace evidence testing for forensic evidence submission to the DPS crime lab. LPD reports an average wait time of two to three months for trace evidence and three to six months for DNA analysis. Furthermore, the nonprofit Texas Center for the Judiciary conducted a survey in January 2016 regarding sources of evidence delays that was sent to all active district and county court at law trial judges. The survey asked the respondents to identify sources of delay. Of the 130

individuals who responded to this question, 125 respondents identified crime lab results as a source of delay. Delays can result in issues including increased jail costs, attorney fees, and impediments for expert witnesses. DPS indicated delayed forensic testing results can affect plea agreements. For instance, local jurisdictions may not offer plea agreements in drug cases until lab results are received.

DPS sets priorities for testing evidence based on information from district attorney offices. As a default, DPS tests to the highest penalty group for drug cases. In drug cases, the offense an individual is charged with is determined on the amount of drug that was in the individual's possession. After testing has confirmed the highest possible level of drug offense for which an individual could be charged, DPS discontinues testing the remainder of the drugs submitted. However, DPS reports that some local jurisdictions require that all drug evidence be tested, even though it will not affect the level of the offense. Testing evidence in excess of what is necessary can reduce the crime lab's overall efficiency and turnaround times.

DPS reports communication among laboratories and requesting agencies is positive in some areas of the state. In these areas, the labs proactively reach out to requesting law enforcement agencies to ensure that tests still need to be completed when the labs are available to begin testing evidence. If DPS staff do not believe that testing of certain submitted samples is necessary, they may contact the requesting entity. However, according to DPS, if the requesting entity wants the testing to move forward, DPS will test the sample in question. Although this communication happens in some cases, it is not standard procedure for the DPS crime labs to ensure that all testing is still necessary at the time tests are performed. Communication between DPS and the requesting agencies is important to avoid unnecessary testing; in many cases, significant time occurs from DPS' receipt of a testing request to the time testing begins. During this time, circumstances in the criminal case may have changed. This change can be the result of the defendant agreeing to a plea, charges being dismissed during legal proceedings, or some other progression in the case.

Texas Code of Criminal Procedure, Section 38.35, authorizes any law enforcement or governmental agency to charge a fee for certain types of forensic analysis. Various accredited crime labs across the state that conduct forensic testing for law enforcement agencies charge fees for services. As of August 2016, DPS does not charge any fees to law enforcement agencies that request forensic evidence testing, and few other

restrictions are placed on the amount or necessity of forensic evidence submitted.

DPS previously implemented measures to manage crime laboratory workflow. In 2012, DPS issued a memo to law enforcement agencies to require prosecutors to provide written requests to test evidence in misdemeanor cases. This requirement is now a permanent policy. The DPS Physical Evidence Handbook states misdemeanor drug offenses will be accepted only if prosecutors provide written requests stating that drug testing results are needed to prosecute these cases. In homicide cases, agency submissions are limited to 10 samples per case; any requests for more than that limit are required to have written requests from prosecutors. Also, DPS crime labs typically do not complete blood alcohol testing if a valid breath test was completed at the time of the offense. Furthermore, it is DPS policy to not complete drug toxicology tests requested in addition to blood alcohol test results that are more than the legal definition of intoxication of a 0.08 alcohol concentration. Option 1 would include a rider in the 2018–19 General Appropriations Bill to require DPS to establish a process for maintaining communication with requesting agencies on the status of cases before forensic testing. DPS also could use existing statutory authority to charge fees for forensic testing to encourage improved communication with local jurisdictions when needed.

In 2015, the DPS crime lab in Midland reduced its drug backlog 66.0 percent. The lab achieved this reduction by closing 1,641 cases without analysis as a result of communicating with district attorneys to determine whether testing was still required. DPS also reduced the drug backlog by 20.0 percent by working with local stakeholders who used the five labs with the majority of the statewide backlog to ensure forensic testing of the cases were still needed for prosecution.

Local law enforcement agencies may call DPS to inform the labs about reaching plea agreements so that evidence related to these cases no longer need to be analyzed. ASCLD/LAB authorizes a crime lab to stop work on an evidence submission, but the accreditation organization requires that labs issue a report on the findings up to the point work was stopped. ASCLD/LAB authorizes labs to do this as long as the labs have and follow their own policies for doing so. ASCLD/LAB requirements authorize for this stoppage to be done by discipline or for a lab as a whole. DPS does not have such a policy. This lack of a stoppage policy results in the crime labs completing testing on any evidence for which a test has begun, even if it is determined during the testing that it is no longer necessary. The rider in Option 1 would also

require the Department of Public Safety crime lab to implement a stop-work policy. This policy would authorize testing of evidence to be stopped if the department determines it is no longer necessary. At the Austin Police Department (APD) crime lab, if a customer advises the lab that testing is no longer necessary for testing that has already begun, the lab stops testing. APD crime lab management reports that open communication with investigators, the rapport established with the local police department because the lab works with a limited number of law enforcement agencies, and its customers' knowledge of the testing process due to working with the lab frequently helps to manage expectations.

### **FISCAL IMPACT OF THE OPTION**

It is assumed that DPS could implement this option within existing resources. Option 1 could help reduce the backlog by enabling DPS to better manage its workload.

The House introduced 2018–19 General Appropriations Bill includes a rider implementing Option 1.

No Hearing Materials Provided  
for DPS Testimony on  
Crime Labs

No Hearing Materials Provided  
for DPS Testimony on  
Sexual Assault Kits Update